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Baiguen v. Harrah's Las Vegas, LLC, 134 Nev., Adv. Op. 71 (Sept. 13, 2018) (en banc)

Scott Whitworth

University of Nevada, Las Vegas – William S. Boyd School of Law

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CIVIL APPEAL: EMPLOYMENT

Summary

The Court determined that (1) an employee's injuries that originate before entering the workplace but are aggravated due to an employer's failure to provide timely medical assistance arise out of and in the course of employment; and (2) that employees' recovery against their employers for such injuries are confined to the exclusive remedies for workers' compensation under the Nevada Industrial Insurance Act (NIIA).

Background

I.

Israel Baiguen was suffering from a stroke when he arrived for work at Harrah's. Several co-workers noticed that he was disoriented, unresponsive to questions, and drooling. While in the clock-in area, Baiguen's supervisor also noticed that Baiguen was drooling and that one side of his face was drooping. At the supervisor's request, two of Baiguen's co-workers drove him home. Two days later, Baiguen's girlfriend found him in his apartment and drove him to the hospital after discovering he was unable to talk and was drooling.

Because Baiguen was a diabetic, the only FDA-approved treatment for a stroke was a medication that had to be administered within thirty minutes his exhibiting symptoms in order to be effective. While this treatment was not a guaranteed fix for Baiguen's medical condition, it would have increased his chance of recovery by thirty percent.

Baiguen sued Harrah's in district court for failure to aid him during his stroke resulting in his missing the thirty-minute window where the treatment could have been effectively administered. The district court granted summary judgment to Harrah's holding that the injury arose from and occurred at his place of employment; thus, limiting remedies to workers' compensation. Baiguen appealed and the court of appeals reversed the district court's decision. Harrah's then petitioned this Court for review.

Discussion

II.

The Court reviewed the district court's grant of summary judgment de novo. Employees give up their common law remedies in exchange for the protections afforded under the NIIA.² Employees may not sue their employees for negligence for injuries incurred arising from and during employment.

A.

Injuries sustained by employees traveling to or from work within a reasonable time occur in the course of employment.³ Baiguen's argument that his injury did not occur within the scope of employment because he had not clocked in, and because he was not performing any of his work

¹ By Scott Whitworth.

² NEV. REV. STAT. § 616A.010(3) (2017).

³ *Mirage v. Cotton*, 121 Nev. 396, 400, 116 P. 3d 56, 58 (2005).

duties was irrelevant because he was on Harrah's premises during his regularly scheduled time to work and his employer approved the plan for two of his co-workers to take him home. Therefore, Baiguen's injury occurred during the scope of employment.

B.

Injuries arise out of employment when there is a causal connection between the injury and the nature of the work or workplace.⁴

1.

The causal connection depends whether the risk was (1) an employment risk; (2) a personal risk; or (3) a neutral risk.⁵ Employment risks arise out of employment. Personal risks clearly do not arise out of employment and include injuries caused by employee's personal conditions and illnesses.⁶ Neutral risks include injuries caused by random chance but can arise out of employment if the employee is at greater risk as an employee than the general public.⁷ Additionally, these risks are not mutually exclusive and thus can constitute a mixed risk.

The Court determined that Baiguen's actual stroke constituted a personal risk. However, Harrah's lack of a policy and procedure or training for its employees led to its failure to render appropriate aid to Baiguen. Therefore, the exacerbated injury Baiguen suffered from not receiving timely treatment represented an employment risk. Therefore, the overall risk was a mixed risk and arose out of Baiguen's employment with Harrah's.

2.

There is no general duty for strangers to aid others in peril, but where there is a special relationship between the parties, such as in an employee-employer or innkeeper-guest relationship, such a duty can exist.⁸

Baiguen's argument that his injury did not arise out of employment because Harrah's owed him the same affirmative duty as any other guest is invalid because he was not a guest at Harrah's, he was there as an employee. Moreover, he was in an employee-restricted space where his only opportunity for aid was from his employer. Thus, Harrah's duty to aid Baiguen would arise from the employer-employee relationship.

Conclusion

The Court held that Baiguen's injury occurred in the course of employment because it was sustained on the way to, at, and from work. Furthermore, his injury arose from employment because Harrah's failed to provide proper training and procedure for what to do in emergencies such as the one Baiguen experienced, which constituted an employment risk. Therefore, Baiguen is limited to the exclusive remedies provided under the NIIA. Accordingly, the Court affirmed the district court's decision.

⁴ Wood v. Safeway, Inc., 121 Nev. 724, 733, 121 P.3d 1026, 1032 (2005).

⁵ Rio All Suite Hotel & Casino v. Phillips, 126 Nev. 346, 351, 240 P.3d 2, 5 (2010).

⁶ *Id.*

⁷ *Id.* at 353.

⁸ Lee v. GNLV Corp., 117 Nev. 291, 295, 22 P.3d 209, 212 (2001).