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Patush v. Las Vegas Bistro, LLC, 135 Nev. Adv. Op. 46 (Sep. 26, 2019)

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EMPLOYMENT LAW: LIMITATIONS PERIOD

Summary

The Court determined that (1) claims for wrongful termination are subject to the limitations period from NRS § 11.190(4)(e) for injuries or death caused by another person's wrongful act or neglect; and (2) attorney fees were not warranted under § NRS 18.010(2)(b) as the issue was one of first impression.

Background

Antonne Patush was fired from her job at Las Vegas Bistro on July 3, 2014. She alleged that she was terminated in retaliation to her worker's compensation claim for a previous injury from work. She filed a wrongful termination claim on March 21, 2018.

Las Vegas Bistro moved to dismiss the claim, claiming NRS § 11.190(4)(e) applied to wrongful termination claims and her claim was therefore barred by the two-year statute of limitations. The district court found in favor of Las Vegas Bistro and granted the motion to dismiss, and also awarded Las Vegas Bistro attorney's fees. Patush appealed.

Discussion

NRS § 11.190(4)(e) applies to wrongful termination claims

The statute for wrongful termination does not provide an expressed limitations period. The court must then determine a correct period to use, using analogous causes of action. Here, the cause of action involved an injury to an employee's personal rights caused by a wrongful act of another. This is analogous to NRS § 11.190(4)(e), which deals with recovering damages for injuries or death caused by the wrongful act of another.² The two-year statute of limitations for this type of claim is well supported in analogous case law from other jurisdictions and similar cases in Nevada involving employee claims under different causes of action.

Attorney's Fees Should Not Have Been Awarded

Attorney's fees are not warranted in issues of first impression. NRS § 18.010(2)(b) allows attorney's fees to be awarded for claims that are brought under unreasonable grounds.³ However, because the court had never decided on the statute of limitations for the type of claim Patush was bringing, her claim was not brought under unreasonable grounds and attorney's fees should not have been awarded.

¹ By Katrina Weil.

² NEV. REV. STAT. § 11.190(4)(e) (2019).

³ NEV. REV. STAT. § 18.010(2)(b) (2019).

Conclusion

NRS 11.190(4)(e) applies to a wrongful termination claim against an employer. Patush did not file her claim within the 2-year limitations period, and as a result the district court judgment is affirmed for barring her claim. However, attorney's fees were not warranted because the issue was a matter of first impression. The district court judgment for the fees is reversed.