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Salloum v. Boyd Gaming Corp., 137 Nev. Adv. Op. 56 (Sep. 23, 2021).

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STATUTORY AMENDMENTS: RETROACTIVE APPLICATION

SUMMARY

The Nevada Supreme Court upheld a lower court’s dismissal of an employment discrimination case. Boyd Gaming Corporation (“Boyd”) terminated Salloum’s employment. The limitation period for an employment discrimination claim expired 180 days after the alleged discriminatory action. In 2019, the legislature amended NRS 613.430² to extend the limitation period, and Salloum subsequently filed a claim. Boyd filed a motion to dismiss, arguing that Salloum’s claims expired under the previous version of the statute and the amended statute did not apply. The lower court agreed with Boyd and dismissed the claim. The lower court also found that equitable tolling did not apply.

Because the amendment to NRS 613.430³ did not explicitly state that it applied retroactively, the Court held that the district court was correct. The Court found that equitable tolling did not apply because Salloum did not establish that his failure to timely file his claim resulted from factors he could not control.

FACTS AND PROCEDURAL HISTORY

Boyd fired Salloum on August 15, 2018. In February 2019, Salloum sent a letter to the EEOC to request that the EEOC investigate alleged discrimination by Boyd against Salloum. In June, Salloum filed complaints with the EEOC and the Nevada Equal Rights Commission (NERC), alleging Boyd fired him for discriminatory reasons. He requested a right to sue letter on August 12, 2019. The letter was issued the next day, and Salloum filed a claim in district court on November 1, 2019. Boyd moved for dismissal, arguing that the claims had expired under the older version of NRS 613.430,⁴ which was in effect through September 30, 2019. The older version of the statute only allowed 180 days after the alleged discrimination to file a claim. Salloum argued that the new version, which established the 180-day period or 90 days after issuance of a right-to-sue letter, whichever is later, controlled, so his complaint was timely because he filed it within 90 days of receiving a right-to-sue letter. He also argued his claims were not barred because of equitable tolling. The district court concluded that the older version of the statute controlled and that equitable tolling did not apply and dismissed Salloum’s claims.

DISCUSSION

The 2019 amendment to NRS 613.430 did not revive Salloum’s expired claims

The Court concluded that the 2019 amendment did not retroactively apply because the legislature did not explicitly state that it did so. The Court relied on precedent that legislation

¹ By Terra Shepard.

² NEV. REV. STAT. § 613.430 (2019).

³ *Id.*

⁴ NEV. REV. STAT. § 613.430 (1983).

does not apply retroactively unless the legislature specifically states that it does so, or that retroactive application is necessary to meet the legislature's intent.⁵

An exception to retroactive application is when amended statutes only relate to remedies and procedure and do not affect substantive rights, in which case the amended statutes apply retroactively to pending cases.⁶ The Court concluded that applying the amended statute would affect Boyd's substantive rights because the limitation period had already expired, relieving Boyd of potential liability. Therefore, retroactive application of the amended statute was not appropriate.

The Court previously addressed whether the removal of a limitation period concerning child support collection applied retroactively to revive expired claims.⁷ In that case, the legislature removed a portion of the bill that would have provided for retroactive application of the amended statute, so the Court concluded that the legislature did not intend for the amendment to apply retroactively or to revive expired claims.⁸ The Court stated that the majority of jurisdictions to address the issue of retroactive application of amended statutes have held that without a clear expression of intent from the legislature, statutory lengthening of limitation periods do not revive previously expired claims. The Court held that this principle applies in Nevada. Because there was not explicit intent in the amendment to NRS 613.412, it does not apply retroactively. Salloum's claims expired before the statute was amended, so the lengthened period did not revive his claim against Boyd.

Equitable tolling does not apply to Salloum's claim

The Court stated that the district court erred in concluding that equitable tolling could never apply to employment discrimination claims. This was harmless error, because Salloum could not demonstrate that equitable tolling was warranted. To establish the need for equitable tolling, a plaintiff must show that they could not timely file claims due to circumstances beyond their control.⁹ Salloum could not do so. The record showed that he had all the knowledge he needed to file a claim at the time he sent the letter to the EEOC in February 2019. Additionally, Salloum argued that equitable tolling should apply because of a "miscalculation" of the statute. The Court found that a miscalculation was not enough to warrant equitable tolling.

CONCLUSION

The Court held that when a legislature lengthens a limitation period after the expiration of a claim, the lengthened limitation period does not apply retroactively and does not revive a claim unless the legislature states that it applies retroactively and revives claims. Because the legislature did not make such a statement here, the lengthened limitation period did not apply to Salloum's claims. He also was not entitled to equitable tolling. Therefore, the district court's dismissal was appropriate.

⁵ Valdez v. Emps. Ins. Co. of Nev., 123 Nev. 170, 179, 162 P.3d 148, 154 (Nev. 2007).

⁶ 123 Nev. at 179–80, 162 P.3d at 154.

⁷ McKellar v. McKellar, 110 Nev. 200, 871 P.2d 296 (Nev. 1994).

⁸ 110 Nev. at 203, 871 P.2d at 298.

⁹ Fausto v. Sanchez-Flores, 137 Nev. Adv. Op. 11, 482 P.3d 677, 681 (2021).