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Neville, Jr. vs. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 95 (Dec. 7, 2017)

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EMPLOYMENT LAW: WAGES

Summary

The Court clarified that NRS 608.140 allows for private causes of action for unpaid wages based on the language discussing attorney fees in a private cause of action.

Background

Petitioner, John Neville, Jr., was an hourly employee at a convenience store owned by Terrible Herbst, Inc. Terrible Herbst had a company policy to round an hourly employee's time sheet, up or down, to the nearest 15-minute increment. Neville alleged he was not compensated for work performed on days that he clocked in early or late. Neville filed suit claiming failure to pay wages, denial of payment for hours worked, denial of payment for overtime, failure to timely pay wages due, and breach of contract.

In response, Terrible Herbst moved to dismiss claiming that Neville failed to state a claim under the Nevada Constitution's Minimum Wage Amendment. Terrible Herbst further argued that there was no private right of action under NRS 608. It contended that NRS 608 gave that right only to the Nevada Labor Commissioner and not to private parties.

The district court granted Terrible Herbst's motion to dismiss in part, dismissing Neville's claims under NRS 608. In response, Neville filed a petition for writ of mandamus and argued that the district erred in granting the motion to dismiss.

Discussion

Neville argued that the district court was incorrect in dismissing his complaint under NRS 608 because courts have previously allowed these cases and the statutes created the private right of action. Terrible Herbst, however, opposed this contention by stating that there is no private right of action in that chapter of the NRS to support the Neville's claims.

NRS 608 specifically mandated that employers must pay their employees for the hours worked, that employers must pay employees overtime if applicable, and that employers must promptly pay employees any wages due upon termination or resignations. However, the chapter did not specifically state that an employee had a private right of action if any of those requirements are not met. Instead, the chapter specifically gave the Labor Commissioner authority to enforce the rights of employees under those provisions of the chapter.²

While there was no explicit language that provided for the right of private action, it could be inferred that the Legislature intended to.³ NRS 608.140 showed the Legislature intended to create a private judicial remedy when it provided for the collection of attorney fees in a private

¹ By Anna Sichtung.

² Nev. Rev. Stat. § 608.180 (2015).

³ *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 958, 194 P. 3d 96, 100-01 (2008). (“[T]he determinative factor is always whether the Legislature intended to create a private judicial remedy.”)

cause of action for unpaid wages. Courts have previously interpreted that same language to allow for private causes of action for other types of employment disputes.⁴

Additionally, NRS 607 offered an avenue for the Labor Commissioner to enforce the rights of an employee on their behalf if that employee does not personally have the funds necessary to pursue a claim for unpaid wages. This alternate option, in lieu of utilizing the aid of the Labor Commissioner, was a private right of action.

Further, “[a] writ of mandamus is available... to control an arbitrary or capricious exercise of discretion.”⁵ Here, the district’s court’s decision to grant the motion to dismiss was both arbitrary and capricious based upon the plain reading of the Amendment. The remaining claims under NRS 608 were prematurely dismissed as well.

Conclusion

NRS 608 provides a private cause of action for the collection of unpaid wages. “It would be absurd to think that the Legislature intended a private cause of action to obtain attorney fees for an unpaid wages suit but no private cause of action to bring the suit itself.” Therefore, Neville should have been permitted to bring his claim before the court. Additionally, the Court also ruled that the Nevada Minimum Wage Amendment clearly allows for a private cause of action as a means for an employee to enforce their rights. The court issued a writ of mandamus to the district court to vacate the order dismissing Neville’s claims.

⁴ *Id.* at 964 n.33, 194 P.3d at 104 n. 33.

⁵ *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).