

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERTZ EQUIPMENT RENTAL
CORPORATION,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
PETER I. BREEN, DISTRICT JUDGE,
Respondents,
and
DIANA KENNEDY AND DONALD
KENNEDY,
Real Parties in Interest.

No. 43384

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION
FOR WRIT OF PROHIBITION

This is an original petition for writ of prohibition, challenging a district court order denying petitioner's motions to quash and dismiss, and ordering real party in interest to file and serve an amended complaint naming petitioner as a defendant in the underlying case. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

DISCUSSION

"A writ of prohibition may issue to arrest the proceedings of a district court when such proceedings are in excess of the district court's jurisdiction."¹ "This court has stated that it may exercise its discretion to review decisions of law . . . where 'no disputed factual issues exist and,

¹Civil Serv. Comm'n v. Dist. Ct., 118 Nev. 186, 188, 42 P.3d 268, 270 (2002) (citing NRS 34.320).

pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action.”²

We conclude that writ relief is appropriate in this case because real party in interest, Donald Kennedy, and the district court improperly utilized joinder to bring petitioner Hertz Equipment Rental into the action below. First, under NRCP 19(a)(2), complete relief as between the real parties in interest is entirely possible. Second, Hertz claims no interest in the action. Third, Donald will not be subject to inconsistent or duplicative liability by virtue of Hertz’s absence.³ Fourth, Diana conceded that NRCP 19 was improperly invoked.⁴ Fifth, Donald’s motion for joinder did not toll the statute of limitations as to Diana’s claims against Hertz because the original complaint is insufficient to implicate the “relation back” doctrine⁵ under NRCP 15(c), or to justify permissive joinder by Diana under NRCP 20 after the statute of limitations has run. Therefore, we grant the petition and direct the clerk of this court to issue a writ of prohibition

²Id. at 188-89, 42 P.3d at 270 (quoting Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997)).

³Donald argues that he is not liable at all to Diana because the true fault for the underlying accident rests with Hertz. From this he reasons that he cannot defend the action in the absence of Hertz without incurring inconsistent liabilities. This argument is without merit. He can press this defense with or without Hertz in the case.


⁴Because of our decision regarding the joinder issue, we conclude that it is unnecessary to reach the parties’ other arguments.

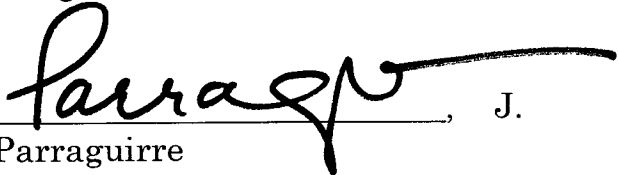
⁵See Lunn v. American Maintenance Corp., 96 Nev. 787, 790, 618 P.2d 343, 344-45 (1980). In this, we note that the impleader of fictitious defendants in this case did not adequately preserve the claim for “relation back” purposes.

precluding the district court from proceeding with any claims by Diana Kennedy against Hertz in district court case no. CV03-01970.⁶

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Peter I. Breen, District Judge
Woodburn & Wedge
Galloway & Jensen
Perry & Spann/Reno
Washoe District Court Clerk

⁶We note that our decision does not preclude Donald from seeking relief under NRS 17.225 et seq. or under the doctrine of implied indemnity.