

IN THE SUPREME COURT OF THE STATE OF NEVADA

HANS MOOSMULLER,  
INDIVIDUALLY AND AS CLASS  
REPRESENTATIVE FOR OTHERS  
SIMILARLY SITUATED,  
Appellant,

vs.

THE STATE OF NEVADA, PUBLIC  
EMPLOYEES' BENEFITS PROGRAM;  
P. FOREST THORNE, EXECUTIVE  
OFFICER OF THE PUBLIC  
EMPLOYEES' BENEFITS PROGRAM  
IN HIS REPRESENTATIVE CAPACITY  
ONLY; BOARD OF THE PUBLIC  
EMPLOYEES' BENEFITS PROGRAM;  
TERRY JOHNSON, AS CHAIRMAN OF  
SAME, IN HIS REPRESENTATIVE  
CAPACITY ONLY; UICI  
ADMINISTRATORS, THE FORMER  
FUND ADMINISTRATOR OF THE  
PUBLIC EMPLOYEES' BENEFITS  
PROGRAM; BENEFIT PLANNERS,  
THE CURRENT FUND  
ADMINISTRATOR; AND STRATEGIC  
RECOVERY PARTNERSHIP, INC., THE  
ENTITY ASSERTING SUBROGATION  
RIGHTS FOR THE PUBLIC  
EMPLOYEES' BENEFITS PROGRAM,  
Respondents.

No. 43524

**FILED**

DEC 20 2005

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing appellant's complaint in an action to prohibit a third-party subrogation claim. First Judicial District Court, Carson City; William A. Maddox, Judge.

NRCP 12(h)(3) states that “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” The plaintiff bears the burden of proof as to meeting the jurisdictional requirement.<sup>1</sup> “In order to dismiss a case based on lack of subject matter jurisdiction, it must appear to a legal certainty that the claim is worth less than the jurisdictional amount. A claim in excess of the requisite amount, made in good faith, satisfies the jurisdictional requirement.”<sup>2</sup>

Before its order of dismissal, the district court permitted appellant Hans Moosmuller to amend his complaint to meet the court’s jurisdictional requirements by either requesting declaratory relief, or by narrowing the potential class to those with current or pending subrogation claims from co-respondent Strategic Recovery Partnership, Inc. (Strategic). We note, however, that Moosmuller’s original complaint, based on the class defined therein, met the Morrison standard of a good faith claim that meets the jurisdictional amount. The district court dismissed that complaint based on Moosmuller’s failure to narrow the potential class as suggested by the district court.

Class certification is necessary for allowing an action to proceed as a class action, but there is no requirement that class certification is required for jurisdiction. Under Nevada’s class action case law, it is unclear how essential it is to plead the specific sections of the

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<sup>1</sup>Morrison v. Beach City LLC, 116 Nev. 34, 36, 991 P.2d 982, 983 (2000).

<sup>2</sup>Id. at 38, 991 P.2d at 984.

class action statute in the complaint.<sup>3</sup> NRCP 23(c)(1) requires that the district court determine if a class action is maintainable “[a]s soon as practicable after the commencement of an action[.]” However, NRCP 9(a) states in pertinent part that “[i]t is not necessary to aver the capacity of a party . . . to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party.” NRCP 8 calls for a “short and plain statement of the claim showing that the pleader is entitled to relief.” Finally, NRCP 8(f) states that “[a]ll pleadings shall be so construed as to do substantial justice.”

Although the district court allowed Moosmuller time to amend his complaint, Moosmuller had not yet moved for class certification. In addition, the district court retains the right under NRCP 23(c)(1) to alter, amend, or make conditional any order granting or denying class certification. Thus, the district court could, during proceedings on a motion to certify a class, order Moosmuller to restrict the class. To order such changes so early in the process, however, before discovery of any sort that might permit Moosmuller to more accurately describe the class, does not meet the “substantial justice” standard of NRCP 8(f).

Additionally, class certification decisions require the district court to consider, at a minimum, the requisite NRCP 23 issues of numerosity, typicality, commonality, and adequacy of representation, as well as the appropriateness of proceeding in a class action. No such findings were made here, nor did the parties brief those issues.

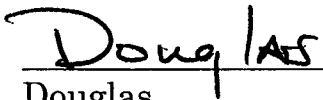
We conclude that the district court abused its discretion in refusing to certify a class before adequate discovery was conducted and


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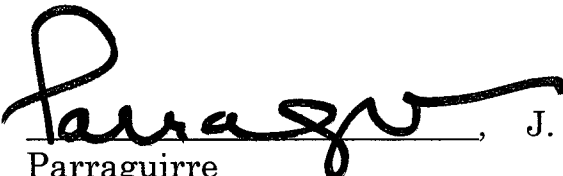
<sup>3</sup>Id.

before a motion to certify the class was properly brought. We further conclude, therefore, that it was an abuse of discretion for the district court to dismiss Moosmuller's complaint based on its decision that it could not certify a class as enumerated in Moosmuller's complaint. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. William A. Maddox, District Judge  
Jon M. Yapple  
Attorney General George Chanos/Carson City  
Woodburn & Wedge  
Carson City Clerk