IN THE SUPREME COURT OF THE STATE OF NEVADA

STAR INSURANCE CO.,
Appellant,
vs.
B & H CONSTRUCTION, INC.,
Respondent.

No. 46430

FILED

JAN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a workers' compensation matter. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

In this appeal, we address whether NRS 616B.224(4) grants workers' compensation insurers a private right of action against a general contractor to recover a subcontractor's unpaid premiums. We conclude that the Legislature did not intend this statute to create a private right of action. Separately, we decline to imply a private right of action in this case. Accordingly, we affirm the district court's order granting respondent B & H Construction's motion for summary judgment. The parties are familiar with the facts and we do not recount them here except as necessary to our discussion.

Standard of review

This court reviews a district court's grant of summary judgment de novo.[1] Summary judgment is appropriate when no genuine issues of material fact remain and the moving party is entitled to

[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

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judgment as a matter of law.[2] The facts of this case are largely undisputed. The sole question on appeal is therefore whether NRS 616B.224(4) creates a private right of action.

Existence of a private right of action

Appellant Star Insurance Co. contends that the district court erred in granting summary judgment against it because NRS 616B.224(4) creates a private right of action allowing it to proceed against B & H in district court to recover the unpaid premiums of B & H's subcontractor, Palace Steel Erectors. For the following reasons, we disagree.

Generally, this court will not search for meaning beyond a statute's plain language.[3] Where statutory language is ambiguous, however, we will construe it in accordance with the entire statutory scheme and in light of "legislative histories, reason, and considerations of public policy" to effect a construction that reflects the Legislature's intent.[4]

NRS 616B.224(4) provides: "To the extent permitted by federal law, the insurer shall vigorously pursue the collection of premiums that are due under the provisions of chapters 616A to 616D, inclusive, and chapter 617 of NRS even if an employer's debts have been discharged in a bankruptcy proceeding." Star asserts that the phrase "vigorously pursue"

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[2]Id.

[3]Nelson v. Heer, 123 Nev. ___, ___, 163 P.3d 420, 425 (Adv. Op. No. 26, July 26, 2007).

[4]Id.; SIIS v. Bokelman, 113 Nev. 1116, 1123, 946 P.2d 179, 184 (1997).

indicates that the Legislature intended to create a private right of action for insurers.

Contrary to Star's assertion, the plain language of the Nevada's Industrial Insurance Act (NIIA) directs aggrieved insurers to initiate administrative proceedings against delinquent employers through the Administrator of the Division of Industrial Relations (DIR).[5] Under NRS Chapter 616D, the DIR Administrator may elect one of two administrative tracks to sanction an employer for accumulating arrearages: fines or restitution.[6] Because the plain language of the NIIA does not explicitly create a parallel civil action for private insurers, we conclude that NRS Chapter 616D contemplates the exclusive procedures available under the NIIA with respect to sanctioning an employer for unpaid premiums. Accordingly, as an aggrieved insurer under the NIIA,

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[5]See NRS 616D.200 et seq.

[6]Under NRS 616D.220, for example, the Administrator may charge an employer for the amount of any unpaid premiums if it concludes that an employer has "[m]ade a false statement or has knowingly failed to report a material fact concerning the amount of payroll upon which a premium is based" or misrepresented the status of an employee. NRS 616D.220(1)(a). On the other hand, if the Administrator initiates an action under NRS 616D.200, the employer is subject to criminal penalties and may be required to pay restitution to an insurer who has incurred costs as a result of the employer's failure to provide, secure, and maintain workers' compensation insurance. See NRS 616D.200(1) & (4)(a). Under this provision, an aggrieved insurer could potentially recoup its lost premiums.

Star is limited to initiating administrative proceedings against B & H through the DIR Administrator.[7]

Implied private right of action

Although the NIIA does not expressly permit a private right of action in addition to its administrative procedures, Star urges this court to imply a private right of action under NRS 616B.224(4) based on the four-factor test set forth in Sports Form v. Leroy's Horse and Sports.[8] The Sports Form factors include the following:

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[7]Despite the NIIA's plain language, Star contends that private insurers have a separate right to recoup a subcontractor's unpaid premiums from a general contractor in a civil action because the State had a similar right before privatization of the State Industrial Insurance System (SIIS). We disagree. In this respect, Star exclusively relies on SIIS v. Durable Developers, in which the State appealed from a district court order reversing the administrative decision of the Nevada Industrial Commission (NIC), which formerly administered Nevada's workers' compensation laws prior to SIIS. 102 Nev. 397, 724 P.2d 199 (1986). Because Durable Developers was decided before the Legislature privatized workers' compensation under the NIIA—and allowed private insurers such as Star to step into the shoes of the State—Star essentially asserts that the procedural history of that case creates a historical record of the State's right (as an insurer) to directly sue employers in district court. As such, having supplanted the State under the NIIA, Star claims to possess the right to do the same under the current regime.

Notably, however, Durable Developers is distinguishable from the case at bar in the following critical respect. In that case the State was the defending party in district court (the employer, not the State, was the aggrieved party). Thus, the State's role in Durable Developers does not correspond to Star's position in this case, where it is the aggrieved party bringing the claim. Accordingly, we conclude that Durable Developers does not afford a legacy right under the NIIA for private insurers such as Star to directly sue employers in district court.

[8]108 Nev. 37, 39, 823 P.2d 901, 902 (1992).

> (1) whether the plaintiff was 'one of the class for whose special benefit the statute was enacted'; (2) whether there was 'any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one'; (3) whether the implication of such a remedy was 'consistent with the underlying purposes of the legislative theme'; and (4) whether the cause of action was 'one traditionally relegated to state law, in an area basically that concerned the State, so that it would be inappropriate to infer a cause of action based solely on federal law.'[9]

In determining whether a statute implicitly recognizes a private right of action, the Legislature's intent is the determinative factor.[10] For the

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[9]Id. (quoting Cort v. Ash, 422 U.S. 66, 78 (1975)).

[10]In determining legislative intent, Sports Form's first and third factors act as interpretive aids. See Thompson v. Thompson, 484 U.S. 174, 189 (1988) (Scalia, J., concurring).

Separately, Star argues that Nevada's workers' compensation scheme was designed to benefit, among other parties, the insurers who are the subjects of regulation. Thus, Star asserts that it meets Sports Form's first supporting factor. We disagree. In Nevada, "[t]he primary purpose of . . . workers' compensation laws is to provide economic assistance to persons who suffer disability or death as a result of their employment." Gallagher v. City of Las Vegas, 114 Nev. 595, 600, 959 P.2d 519, 521 (1998) (emphasis added); see also Hansen v. Harrah's, 100 Nev. 60, 63, 675 P.2d 394, 396 (1984) ("Nevada's workmen's compensation laws reflect a clear public policy favoring economic security for employees injured while in the course of their employment."). As the court in Sahara Hotel & Casino v. Holden recognized, these laws are "humanitarian"—i.e., non-commercial. 114 Nev. 135, 136, 953 P.2d 268, 269 (1998). Thus, we conclude that Star, a private insurer, is not situated within the class that the NIIA was enacted to protect. Accordingly, Star has failed to meet Sports Form's first supporting factor.

following four reasons, we decline to imply a private right of action under the Sports Form test.

First, in giving effect to the Legislature's intent, this court balances dual objectives: to avoid defeating legislative policy[11] while giving effect to all portions of an enacted law such that none is rendered inconsequential.[12] We conclude that implying a private right of action under NRS 616B.224(4) would betray these principles by contradicting that statute's plain language, which does not expressly create a private right of action, and effectively render the administrative procedures under NRS Chapter 616D meaningless.

Second, we have long presumed that the Legislature enacts laws with full knowledge of existing statutes.[13] Thus, we presume that the Legislature understood that it entrusted the enforcement of the NIIA to the same administrative procedures under NRS Chapter 616D that preceded privatization. Similarly, it has never been "the business of this court to fill in alleged legislative omissions based on conjecture as to what the [L]egislature would or should have done."[14] Unlike NRS 616B.224(4), the Legislature usually employs unequivocal language where it has chosen

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[11]See State, Dep't of Mtr. Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1250 (1994).

[12]Savage v. Pierson, 123 Nev. ___, ___, 157 P.3d 697, 701 (Adv. Op. No. 12, May 3, 2007).

[13]See City of Boulder v. General Sales Drivers, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985).

[14]Estate of Delmune v. Allstate Ins. Co., 113 Nev. 414, 418-19, 936 P.2d 326, 329 (1997) (internal quotation marks and emphasis omitted).

to recognize private rights of action.[15] When compared to specific provisions, NRS 616B.224(4) stands out for its conspicuous failure to mention a civil remedy. Thus, we conclude that had the Legislature intended to create a private right of action in this context, it would have done so explicitly.[16]

Third, we have concluded in other contexts that "when a statute does not expressly provide for a private cause of action, the absence of such a provision suggests that the Legislature did not intend for the statute to be enforced through a private cause of action."[17]

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[15]For example, NRS 616B.636 specifically permits "any injured employee or his dependents" to "bring an action at law" against an employer who fails to provide and secure compensation. Likewise, NRS 616D.230 specifically authorizes the Attorney General to commence a "civil action" against any employer who fails to pay fines levied under NRS 616D.200 and NRS 616D.220. See also NRS 616B.697 (permitting an action for damages to be brought against an employee leasing company that violates the terms of the chapter); NRS 616C.215 (governing actions in subrogation against employees who recover damages in tort); NRS 616D.250(1) (self-insured employer who fails to permit inspection of his books is "subject to a penalty of $1,000 for each offense, to be collected by a civil action in the name of the Administrator or the private carrier").

[16]See In re Estate of Prestie, 122 Nev. ___, ___, 138 P.3d 520, 524 (Ad. Op. No. ___, July 20, 2006) (recognizing rule of construction that the mention of one thing implies the exclusion of another); Brown v. De La Cruz, 156 S.W.3d 560, 568 (Texas 2004) ("[W]hen the Legislature includes a right or remedy in one part of a code and omits it in another, that may be precisely what the Legislature intended.").

[17]Richardson Constr. v. Clark Cty. Sch. Dist., 123 Nev. ___, ___, 156 P.3d 21, 24 (Ad. Op. No. 8, April 12, 2007); see also Allstate Ins. Co. v. Thorpe, 123 Nev. ___, 170, P.3d 999, 994-95 (Ad. Op. No. 52, November 21, 2007); Sports Form, 108 Nev. at 39, 823 P.2d at 902.

Correspondingly, we have cautioned courts to exercise restraint in reading additional remedies into a statute where the statute already expressly provides one.[18]

Fourth, where we have inferred a private cause of action, we have been aided by three corroborating indicia of legislative intent: (1) complementary statutory provisions, (2) unambiguous legislative history, and (3) established litigation patterns.[19] In U.S. Design & Constr. v. I.B.E.W. Local 357, this court held that NRS 608.150 granted a private right of action to aggrieved workers against a general contractor for unpaid wages.[20] There, however, even though NRS 608.150 appeared to entrust its enforcement to the district attorney, NRS 11.209(1) created a separate limitations period for worker-initiated actions. Second, reports from the Commissioner of Labor surrounding the adoption of NRS 608.150 demonstrated concerns over the difficulty workers experienced when collecting unpaid wages, and a desire to expand recovery options.[21] Third, the court cited a pattern of litigation under this statutory provision in which workers were plaintiffs.[22] In this case, by contrast, none of these

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[18]Richardson Constr., 123 Nev. at ___, 156 P.3d at 24.

[19]118 Nev. 458, 462, 50 P.3d 170, 172 (2002).

[20]Id.

[21]Id.

[22]Id.

three corroborating indicia of legislative intent exist. Thus, we conclude that Star has failed to meet Sports Form's dispositive factor.[23]

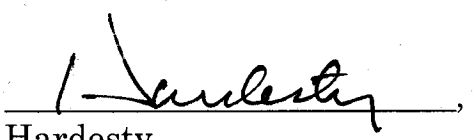
Conclusion

We conclude that NRS 616.224(4) does not grant workers' compensation insurers a private right of action against a general

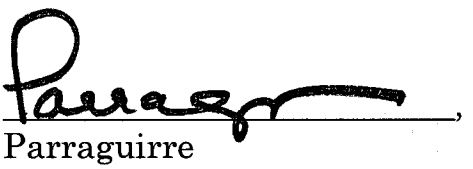
[23]Significantly, where these three indicia are lacking, this court has chosen to literally construe Nevada's workers' compensation laws and defer to the Legislature. In Sahara Hotel & Casino, for example, we literally construed the definition of "compensation" to deny benefits to an employee's non-dependent heirs. 114 Nev. at 136, 953 P.2d at 269. We adopted this narrow construction "in light of . . . the absence of any express language creating a right of survivorship . . ." and concluded that "[a]uthorization for the payment of workers' compensation benefits to non-dependent persons must come from the [L]egislature and not from this court." Id. at 136, 953 P.2d at 269-70. Similar to the provision in Sahara Hotel & Casino, there is no express language creating a private right of action under NRS 616B.224(4) or other related provisions. We therefore decline to imply a private right of action under NRS 616B.224(4).

contractor to recover a subcontractor's unpaid premiums. Accordingly, we conclude that the district court properly granted B & H's motion for summary judgment.

It is so ORDERED.



_____, J.
Hardesty



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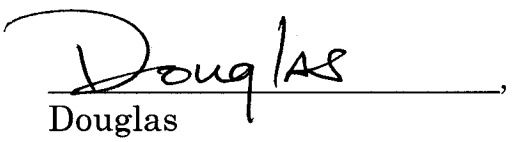
Parraguirre



_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
William F. Buchanan, Settlement Judge
Leverty & Associates
Holland & Hart
Eighth District Court Clerk