

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM S. MASON, SR. AND BRIAN
DIAS,
Appellants,
vs.
THE STATE OF NEVADA AND
NEVADA PERSONNEL COMMISSION,
Respondents.

No. 49748

FILED

SEP 23 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a declaratory relief and breach of contract action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Facts

Appellants, who were University of Nevada Las Vegas (UNLV) police officers, were suspended with pay after they were charged in a June 2002 criminal complaint with presentment of false claims by police officers. Appellants then requested a hearing with respondent Nevada Personnel Commission. After the hearing, on December 10, 2002, a hearing officer entered an order affirming appellants' dismissal from employment. Subsequently, the criminal matter proceeded to a jury trial, resulting in not-guilty verdicts for both appellants in October 2004.

On December 18, 2006, appellants filed a complaint in the district court, seeking (1) a declaration that the termination decision was unfounded or invalid and an order reversing that decision and reinstating their employment with back wages and benefits, (2) damages for breach of contract and breach of the covenant of good faith and fair dealing, and (3) attorney fees and costs. Appellants asserted that the relief sought was justified because they were classified employees with respondent State of

Nevada and they were paid according to a contract, agreement, or other understanding through legislative enactment. According to appellants, respondents breached a contract or agreement by firing them and then failing to compensate them or reinstate them to their jobs after they were acquitted of the criminal charges.

Respondents filed an NRCP 12(b)(5) motion to dismiss, asserting that the complaint failed to state a claim for relief. In particular, respondents asserted that appellants did not have a legally protectable interest to support granting declaratory relief because their acquittal in the criminal matter had no preclusive effect in the civil administrative proceeding. Respondents further argued that appellants did not have a contract for employment with the State of Nevada and thus they had not stated a claim for breach. Finally, respondents argued that because the hearing officer's decision was rendered on December 10, 2002, any contract-based claim would be time-barred, since appellants' complaint was filed more than four years later.

Appellants opposed the motion to dismiss, asserting that they had a legally protectable interest to continued employment, that their action was not time barred because it did not accrue until they were acquitted of the criminal charges, and that they stated viable breach of contract claims because they were entitled to statutory protections, "including those set forth in NAC 284 et seq." creating a "de facto contractual employment arrangement between them and the State."

Respondents replied, arguing among other things, that the Nevada System of Higher Education was the entity responsible for terminating appellants' employment and thus, it was the real party in interest, not the State or the Personnel Commission. Respondents also

argued that appellants failed to exhaust their administrative remedies by not requesting judicial review of the Personnel Commission's decision.

Following a hearing, the district court granted the motion to dismiss, stating that appellants' request for declaratory relief failed for all of the reasons respondents stated. In its written order, the court found that respondents were not the real parties in interest but that UNLV may be the proper party. Although appellants had requested leave to amend the complaint in open court to add UNLV as a defendant, the court denied the request in its written order, providing that "the action may be barred by the statute of limitations."

Discussion

This court reviews de novo orders granting NRCP 12(b)(5) motions to dismiss, accepting all factual allegations in the complaint as true and drawing all inferences in the plaintiffs' favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, ___, 181 P.3d 670, 672 (2008). In that regard, a complaint should be dismissed only when the plaintiffs could prove no set of facts that would entitle them to relief. Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 22, 62 P.3d 720, 734 (2003). If an action is barred by the statute of limitations, the court may dismiss the complaint for failure to state a claim upon which relief can be granted. Bemis v. Estate of Bemis, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998); NRCP 12(b)(5).

Declaratory relief portion of appellants' complaint

When a dismissed state employee requests a hearing to determine the reasonableness of the dismissal, the hearing officer's decision is binding on the parties. NRS 284.390(7). Thereafter, the dismissed employee may petition for judicial review of the decision. NRS 284.390(8); see NRS 233B.130 (setting forth procedures for petitioning for

judicial review). Here, appellants failed to petition for judicial review of the hearing officer's decision in accordance with NRS 284.390(8), instead waiting over four years to file a complaint in the district court. In seeking declaratory relief, appellants sought more than a determination of their rights under a statute or contract; they sought to invalidate the employment decision, which was upheld by a hearing officer, and to obtain damages. "Such issues are not appropriate for declaratory relief actions when an administrative remedy is provided for by statute." Baldonado v. Wynn Las Vegas, 124 Nev. ___, ___, 194 P.3d 96, 105 (2008) (citing Public Service Commission v. District Court, 107 Nev. 680, 685, 818 P.2d 396, 399 (1991), which acknowledged that a declaratory relief action is not a means to circumvent statutory avenues of judicial review). Accordingly, since appellants did not pursue their administrative remedy, the district court properly dismissed the action as it pertained to appellants' request for declaratory relief.

Breach of contract issues


The district court found that any breach of contract claims would be time-barred and thus were subject to dismissal. Contract actions not founded upon a written instrument must be filed within four years of the alleged breach, NRS 11.190(2)(c), and an action upon a liability created by statute must be filed within three years, NRS 11.190(3)(a). Appellants did not file their complaint in the district court until December 18, 2006, more than four years after the challenged employment decision and after that decision was made final and binding.¹ Thus, the district

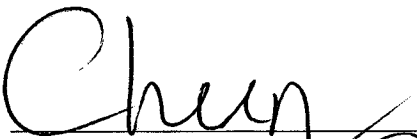
¹Appellants' argument that the statute of limitations did not begin to run until they were acquitted of the criminal charges lacks merit. Although on appeal appellants assert that they should have been

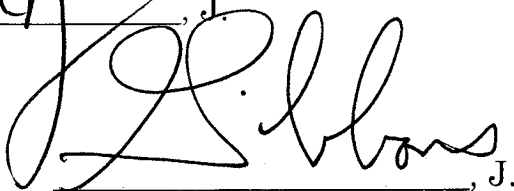
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court properly determined that appellants' contract and statutory-based breach claims were time barred, and it therefore also properly dismissed appellants' complaint for failure to state a claim. Bemis v. Estate of Bemis, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998); NRCP 12(b)(5). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Saitta, J.


Cherry, J.


Gibbons, J.

... continued

reinstated to employment and compensated with back wages and benefits, in their complaint and opposition to the motion to dismiss, they asserted that they had a right to continued employment and that respondents breached a "de facto employment arrangement" and the covenant of good faith and fair dealing by prematurely terminating appellants. Appellants maintained that in accordance with NAC Chapter 284, they should have remained on paid administrative leave until the criminal charges were resolved. Thus, appellants' complaint was based on an allegedly wrongful employment decision, which occurred on or before December 10, 2002. "In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued." Clark v. Robison, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997). "A cause of action 'accrues' when a suit may be maintained thereon." Id. Since the allegedly wrongful termination occurred at least by December 10, 2002, the statute of limitations expired before appellants filed any action challenging that decision.

²Since the district court's order is affirmed for reasons unrelated to immunity, the parties' immunity arguments are not addressed in this order.

cc: Hon. Jackie Glass, District Judge
Eugene Osko, Settlement Judge
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Eighth District Court Clerk