IN THE SUPREME COURT OF THE STATE OF NEVADA

BUILDERS INSURANCE COMPANY,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY OF NEVADA,
Respondent.

No. 50905

FILED

APR 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a workers' compensation action. First Judicial District Court, Carson City; James Todd Russell, Judge.

In March 2002, after experiencing bilateral hand pain while working for Fletcher Roofing, Robert Phillips filed an industrial injury claim against Fletcher for pain and weakness in both hands. Because Phillips was no longer employed by Fletcher but was being employed intermittently by Becker General Contractors (BGC), Fletcher moved the district court to have BGC joined in the action as an indispensible party.

Appellant Builders Insurance Company was not notified by the district court, nor by its insured, BGC, that a motion to join an indispensible party was being brought against BGC regarding the workers' compensation claim. During the resulting hearing, which BGC chose not to attend, the administrative appeals officer issued an order that BGC was responsible for the claim under the last injurious exposure rule. As BGC's insurer, Builders was responsible for paying the claim. BGC failed to notify Builders of the order until after the time for judicial review had passed. After becoming aware of the claim, Builders filed a motion to set aside the order and filed a petition for judicial review. The matter was

heard by the district court and the order was upheld when the district court denied the petition for judicial review. This appeal followed.[1]

Builders appeals on the ground that the district court erred in ruling that Builders did not need to be a party or receive notice of the pending litigation. Specifically, Builders argues that: (1) the district court improperly applied Nevada caselaw in determining that agency principles applied to its relationship with BGC; (2) the district court improperly relied on NRS 616B.033(5) in determining that it was bound by the decisions against BGC; and (3) the failure to join Builders violated NRCP 19(a).[2]

We conclude that the district court did not err in determining that Builders did not need to be a party or receive notice of pending litigation. Accordingly, we affirm the district court's order denying Builders' petition for judicial review.

Standard of review

We will not disturb a district court's findings of fact on appeal if supported by substantial evidence. Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). However, we review a district court's conclusions of law de novo. Id.

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[1]The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

[2]Builders also argues that (1) Phillips failure to abide by NRS 616C resulted in Builders not being put on notice and (2) that Builders constitutional due process rights were violated because of a failure to join both BGC and Builders, as separate and distinct parties, in the pending litigation. We have reviewed these arguments and conclude that they lack merit.

Statutory interpretation is an issue of law that we review de novo. Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev. 575, 579, 97 P.3d 1132, 1135 (2004). When the language of a statute is clear on its face, we will deduce the legislative intent from the words used. Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). Under the plain meaning rule, "this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended." State v. Quinn, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001).

In analyzing multiple statutes, we will attempt to read the statutory provisions in harmony, provided that this interpretation does not violate legislative intent. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 892, 784 P.2d 974, 978 (1989). Additionally, we consider "the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result." City Plan Dev. v. State, Labor Comm'r, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005).

The district court's determination of an agency relationship

Builders contends that the district court erred by improperly construing NAD, Inc v. District Court, 115 Nev. 71, 78, 976 P.2d 994, 998 (1999), as holding that an insurance carrier is an agent for its policyholder and, as such, has contracted away their rights to notice for purposes of litigation. Builders further argues that the district court ignored this court's decision in K-Mart Corporation v. SIIS and contends that K-Mart stands for the proposition that a party's rights in workers' compensation are statutory and cannot be contracted away by the parties. 101 Nev. 12, 19-20, 693 P.2d 562, 567 (1985). We disagree.

We conclude that the district court properly relied on the holding in NAD, Inc. for the proposition that "[a]n insurer is an agent of its insured for purposes of litigation arising from an insurance policy . . .

[and] the insurer retains control of the litigation." Id. at 78, 976 P.2d at 998. Because principles of agency apply to the insured-insurer relationship, it is implicit that notice to BGC constituted notice to Builders. Id.

We also conclude that Builders' argument that a party's rights in workers' compensation matters are statutory goes beyond the bounds of the holding in K-Mart. In K-Mart, we determined that the relationship was status-based, not universally limited by the mere parameters of the contract. Id. at 20, 693 P.2d at 567 (holding that "[t]he rights and duties under our workers' compensation statute are not contractual but based in the employer-employee status from which certain rights and responsibilities flow"). Therefore, we affirm the district court's finding that principles of agency apply to the insured-insurer relationship.

The district court's reliance on NRS 616B.033(5)

Builders contends that the district court erred as a matter of law by relying on NRS 616B.033(5).[3]

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[3]NRS 616B.033(5) provides the following:

> 5. For the purposes of chapters 616A to 617, inclusive, of NRS, as between the employee and the insurer:
>
> (a) Except as otherwise provided in NRS 616C.065, notice or knowledge of the injury to or by the employer is notice or knowledge to or by the insurer;
>
> (b) Jurisdiction over the employer is jurisdiction over the insurer; and
>
> (c) The insurer is bound by and subject to any judgments, findings of fact, conclusions of law,

continued on next page . . .

Contrary to Builders' argument, NRS 616B.033(5) clearly and unambiguously states that the provisions of subsection 5 apply to the entire workers' compensation section of the Nevada Revised Statutes. Under the Nevada workers' compensation scheme, an insurer is considered to have been put on notice of an injury if the employer has notice or knowledge of the injury. NRS 616B.033(5)(a). Further, the workers' compensation insurer is bound by any decision, order, findings, etc. "rendered against the employer in the same manner and to the same extent as the employer." NRS 616B.033(5)(c).

Accordingly, we conclude that Builders, as BGC's insurer, had notice and is bound by all decisions and orders entered against BGC. We come to this conclusion because BGC was properly joined and was provided notice of the hearing and the order, and therefore had notice of the injury. See NRS 616B.033(5)(a). Under the plain reading of NRS 616B.033(5), it is irrelevant that BGC chose not to attend the hearing and that BGC failed to provide notice to Builders. Therefore, we conclude that the district court properly relied upon NRS 616B.033(5).

The failure to join Builders

Builders argues that because the last injurious exposure rule places full liability on the insurance carrier covering the risk at the time of the most recent causally connected injury, the failure to join Builders violated NRCP 19(a).

. . . continued

> awards, decrees, orders or decisions rendered against the employer in the same manner and to the same extent as the employer.

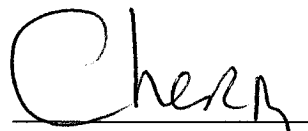
We conclude that the district court was not required to join Builders as a separate party in the litigation because Builders does not meet the requirements of NRCP 19(a) for mandatory joinder. Builders' interests are not impaired or impeded because, as an agent of BGC, its interests are represented by BGC. See NAD, Inc., 115 Nev. at 78, 976 P.2d at 998 (holding that "[a]n insurer is an agent of its insured for purposes of litigation arising from an insurance policy").

Additionally, the Legislature made it clear that the insurance company is not treated as a separate party under the workers' compensation scheme. See NRS 616B.033(5). BGC's failure to notify Builders and to adequately represent itself does not alter the fact that BGC was required to represent both its own interests and those of Builders under general principles of agency and Nevada's workers' compensation scheme.

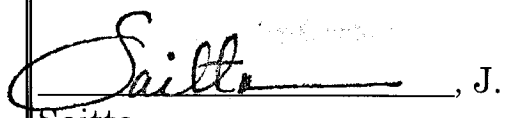
Therefore, we conclude that the district court did not violate NRCP 19(a) in its decision not to join Builders.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Patrick O. King, Settlement Judge
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Beckett, Yott & McCarty/Reno
Carson City Clerk