IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA DEBUNCH; JAMES BUNCH; AND PETER MATRANGA,
Appellants,
vs.
THE STATE OF NEVADA, EX REL. DEPARTMENT OF TRANSPORTATION,
Respondent.

No. 53582

FILED

NOV 17 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a declaratory relief action regarding efforts to recover employee retirement contributions and interest pursuant to NRS 286.460(6). First Judicial District Court, Carson City; James Todd Russell, Judge.

This appeal stems from our decision in State, Department of Transportation v. PERS (NDOT I), where we held that five archeologists,[1] whom the Nevada Department of Transportation (NDOT) had treated as independent contractors, should have been classified as employees. 120 Nev. 19, 21, 23, 83 P.3d 815, 816, 817-18 (2004). As a result, we affirmed the district court's order requiring NDOT to pay the Public Employees' Retirement System (PERS) more than $400,000 for back employee and

[1]Only three of the five archeologists in NDOT I are appellants in the instant appeal. When discussing NDOT I, we will use the terminology used in that opinion; namely, we will refer to the employees as "the five archeologists." When discussing the current appeal, we will refer to appellants, Patricia Debunch, James Bunch, and Peter Matranga, collectively, as "State Employees."

employer contributions, plus interest, on behalf of the five archeologists. Id. at 23, 83 P.3d at 817-18.

Subsequent to our decision, NDOT paid PERS in full. NDOT then sought reimbursement from the five archeologists, who refused to pay. NDOT filed an application in the district court for the entry of summary judgment pursuant to NRS 353C.150. The five archeologists filed a complaint for declaratory relief, seeking a determination of whether NDOT could collect. The district court granted summary judgment in favor of NDOT. This appeal followed.

State Employees argue on appeal that it was error for the district court to grant summary judgment in favor of NDOT. They make four contentions in support of their argument: (1) the district court erred when it determined that NDOT's cause of action accrued when it paid the entire amount owed to PERS because the correct time for accrual was when PERS first made its determination that State Employees were not independent contractors; (2) the district court erred when it found that NRS 353C.150 controlled the time period to file a complaint with respect to NRS 286.460(6) because the correct statute of limitations is set by NRS 11.190(3); (3) the district court erred when it determined that the money that State Employees owed NDOT was a debt, as contemplated by NRS 353C.150; and (4) the district court erred when it found that the doctrines of unclean hands and laches did not apply. We address each contention and conclude that State Employees' arguments are without merit. Accordingly, we affirm the district court's order granting NDOT's motion for summary judgment.

The district court did not err when it granted NDOT's motion for summary judgment

Standard of review

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting NRCP 56(c)). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Id. at 731, 121 P.3d at 1031. In reviewing a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id. at 729, 121 P.3d at 1029.

NDOT's cause of action accrued when NDOT paid the entire amount it owed to PERS

State Employees contend that NDOT is time-barred from attempting to recover employee contributions and interest because the cause of action accrued on April 14, 1999, when PERS first made the determination that the five archeologists were employees and not independent contractors. We disagree.

In NDOT I, we resolved a dispute between NDOT and PERS. 120 Nev. 19, 83 P.3d 815. For nearly ten years, NDOT had treated the five archeologists as independent contractors rather than employees. Id. at 21, 83 P.3d at 816. As a result of this classification, NDOT had not paid contributions to PERS on their behalf. Id. Thereafter, PERS auditors issued a report that recommended classifying the five archeologists as

employees rather than independent contractors. Id. The Public Employees' Retirement Board accepted the report and recommended that NDOT be assessed approximately $350,000 in unpaid employee and employer contributions and interest. Id. NDOT failed to pay, and PERS filed a petition for a writ of mandamus in the district court. Id. The district court determined that PERS' determination that the five archeologists were employees, rather than independent contractors, was not arbitrary and capricious and therefore issued the writ of mandamus. Id. On appeal, we affirmed the district court, concluding that "NDOT must pay the amount assessed for unpaid employee/employer contributions plus interest." Id. at 23, 83 P.3d at 817-18. Immediately following that sentence, we placed a footnote that states, "Although NDOT is responsible for paying both employee and employer contributions under NRS 286.460(6), the statute also provides '[t]he public employer is entitled to recover from the employee the employee contributions and interest thereon.'" Id. at 23 n.13, 83 P.3d at 818 n.13 (quoting NRS 286.460(6)).

Although that footnote in NDOT I did not explicitly state when such a cause of action by NDOT against State Employees would accrue, it signaled that such a cause of action would accrue at the time NDOT made its payment to PERS. See id. As we have stated, "[a] cause of action 'accrues' when a suit may be maintained thereon." Clark v. Robison, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997). In other words, the accrual date is the time at which a party can prosecute an action. See id. This rationale is consistent with federal circuit and California case law involving the accrual of causes of action for reimbursement. See, e.g., States Steamship Co. v. American Smelting & Refining Co., 339 F.2d 66, 70 (9th Cir. 1964) (explaining that generally, with indemnity-type claims,

a cause of action does not accrue until actual payment has been made); County of Fresno v. Lehman, 280 Cal. Rptr. 310, 313 (Ct. App. 1991) (explaining that in resolving dispute between state and county, "[i]t was not until [c]ounty was ordered to pay and paid those fees that [c]ounty could apply for reimbursement" pursuant to the governing statute).

NDOT paid PERS in full on March 17, 2004. NRS 286.460(6) empowers a public employer to "recover" contributions and interest thereon. It was not until NDOT paid PERS that it could "recover" these amounts from State Employees. Interpreting the cause of action as accruing as of any other date would render the language of NRS 286.460(6) regarding "recover[y]" meaningless. See Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (explaining that "statutory interpretation should not render any part of a statute meaningless"). Moreover, doing so would require us to wholly ignore the fact that in NDOT I, we at least impliedly indicated that NDOT would be allowed to recover employee contributions and interest at the time it paid PERS in full. NDOT I, 120 Nev. at 23 n.13, 83 P.3d at 818 n.13. Accordingly, we conclude that the district court did not err when it determined that no genuine issue of material fact remained in regard to this issue and that respondent was entitled to judgment as a matter of law.

NRS 353C.150 provided the applicable statute of limitations

State Employees assert that the district court erred when it found that that NRS 353C.150 controlled the time period to file a complaint with respect to NRS 286.460(6). They argue that the correct statute of limitations is three years, as set forth in NRS 11.190(3).

NRS Chapter 353C became law in June 1999. 1999 Nev. Stat., ch. 623, §§ 1-24, at 3442-47. The chapter provides procedures for collection of certain debts owed to state agencies. NRS 353C.150(1)

provides a state agency a remedy for collecting debt by allowing it to "file . . . an application for the entry of summary judgment against the debtor for the amount due." The legislative history reveals that lawmakers wanted to create a "catch-all" for state agencies to ensure the collection of money owed in a timely manner. Hearing on S.B. 500 Before the Senate Governmental Affairs Comm., 70th Leg. (Nev., March 26, 1999).

The legislative history of Chapter 353C unambiguously shows that the chapter was intended to apply when state agencies attempt to collect a debt owed. NRS 353C.150 was in effect in 2004 when NDOT's cause of action accrued and therefore is controlling. Accordingly, in 2007, when NDOT initiated proceedings pursuant to NRS 353C.150 to collect the debt owed to it by State Employees, it did so well within the four-year statute of limitations provided in NRS 353C.150. Therefore, we conclude that the district court properly determined that NRS 353C.150[2] was the applicable statute of limitations and that NDOT's claim was not time-barred.

The money owed to NDOT was "debt" as contemplated by NRS 353C.150

State Employees argue, for the first time on appeal, that the money they owe to NDOT is not a "debt" pursuant to NRS 353C.150. They do not provide any legal authority supporting this contention.

We need not consider arguments raised for the first time on appeal. Delgado v. American Family Ins. Group, 125 Nev. ___, ___, 217

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[2]We note that we applied the version of NRS 353C.150 in effect prior to the legislative amendments made to that statute in 2009.

P.3d 563, 567 (2009). We also need not entertain assignments of error not supported by citation to relevant authority. SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984).

Moreover, since NRS 353C.040 broadly defines "debt" as a "tax, fee, fine or other obligation . . . [t]hat is owed to an agency or the State of Nevada[ ] and . . . [t]he payment of which is past due," the sum of money at issue here falls under the ambit of "other obligation" and is therefore a debt. (Emphasis added.) It is a debt owed to NDOT, a state agency, which is past due because it has attempted to collect the debt for roughly two years. We conclude that the district court did not err when it determined that the money that State Employees owed NDOT was a debt as contemplated by NRS 353C.150.

The doctrines of unclean hands and laches did not apply to NDOT's claims

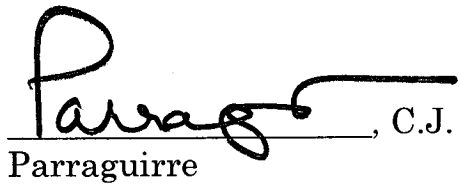
State Employees assert that the district court erred when it found that the doctrines of unclean hands and laches did not apply. The doctrine of unclean hands is an equitable doctrine that prevents relief to a party that has acted improperly. Truck Ins. Exch. v. Palmer J. Swanson, Inc., 124 Nev. 629, 637-38, 189 P.3d 656, 662 (2008). Similarly, laches is an equitable doctrine wherein one party's delay works to the disadvantage of another, thereby making the grant of relief to the delaying party inequitable. Carson City v. Price, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997).

Since PERS' determination in 1999 that the five archeologists were employees, this case has been in various stages of litigation. The facts are well-documented and undisputed. There is no evidence of improper conduct on NDOT's behalf. State Employees make several bald assertions that NDOT intentionally misclassified the five archeologists as

independent contractors, yet they provide no evidence of such wrongdoing on NDOT's part. Additionally, since the 1999 determination, NDOT has actively defended its classification of the five archeologists. In sum, there is no evidence supporting the argument that any type of equitable relief is warranted. Therefore, we conclude that the district court did not err when it found that the doctrines of unclean hands and laches did not apply.

Accordingly, we conclude that the district court properly granted summary judgment. For the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.



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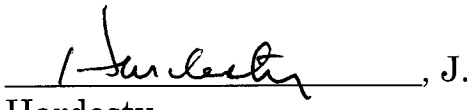

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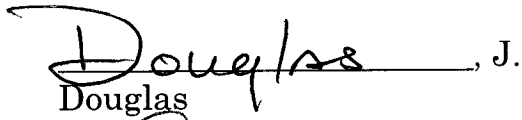

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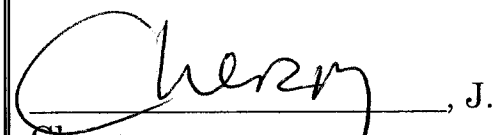

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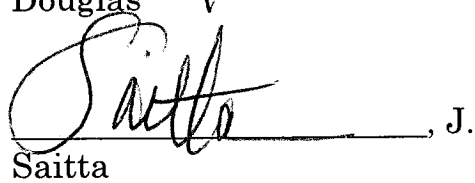

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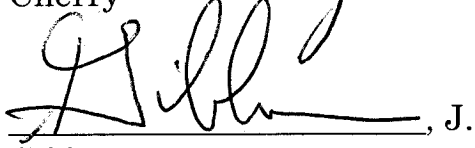

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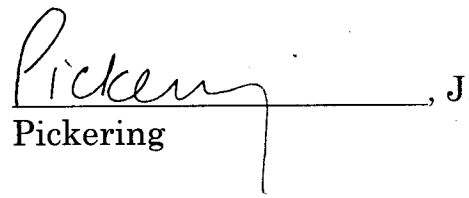

_____, J.
Pickering

cc: Hon. James Todd Russell, District Judge
Lester H. Berkson, Settlement Judge
Attorney General/Transportation Division/Carson City
Hardy Law Group
Carson City Clerk