

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW TURNER, AN INDIVIDUAL,
Appellant,
vs.
GALLAGHER BASSETT SERVICES,
INC., A NEVADA CORPORATION,
Respondent.

No. 55632

FILED

JAN 17 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order, certified as final under NRCP 54(b), dismissing a party from a tort action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed a complaint in district court alleging that respondent committed statutory fraud under NRS 41.600(4), NRS 59[8].0915(14), and NRS 598.0915(15) by misrepresenting the law while processing appellant's claim for workers' compensation benefits. The district court ultimately summarily dismissed the complaint as to respondent. From reviewing the transcript in the record of the July 14, 2009, district court hearing on respondent's motion to dismiss, it appears that the district court granted the motion because appellant failed to satisfy NRCP 9(b)'s requirement that fraud be pleaded with particularity and that, regardless, appellant failed to exhaust his administrative remedies by administratively challenging the initial denial of his workers' compensation claim. Following certification of the dismissal order under NRCP 54(b), appellant now appeals to this court. On appeal, appellant

argues that the dismissal of his complaint was improper. Respondent disagrees.

Under NRS 616D.030, “No cause of action may be brought or maintained against . . . a third-party administrator who violates any provision of [Nevada’s workers’ compensation statutes].” (Emphasis added). Instead, the administrative fines provided in the workers’ compensation scheme are the exclusive remedy. Id.; see also Madera v. SIIS, 114 Nev. 253, 256-57, 956 P.2d 117, 119-20 (1998) (explaining that NRS 616D.030 was enacted by the Legislature to overrule this court’s decision in Falline v. GNLV Corp., 107 Nev. 1004, 823 P.2d 888 (1991), which recognized tort actions for bad faith and negligence in processing workers’ compensation claims).

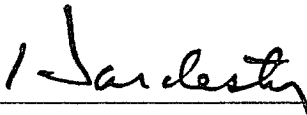
As appellant expressly concedes in his opening brief that respondent acted as his employer’s third-party administrator in processing appellant’s workers’ compensation scheme, we conclude that NRS 616D.030 acts to bar appellant’s complaint as to respondent.¹ Madera, 114 Nev. at 256-57, 956 P.2d at 119-20 (1998). The fact that appellant’s complaint identified the fraud claim under NRS Chapters 41 and 598, which generally address consumer fraud and deceptive trade practices,

¹The application of NRS 616D.030 was not raised in the parties’ briefing. Accordingly, on November 23, 2011, this court entered an order directing the parties to address why this appeal should not be affirmed on this basis. Having reviewed the parties’ supplemental briefing, we conclude that appellant’s arguments as to why NRS 616D.030 should not apply lack merit.

does not alter NRS 616D.030's plain meaning. See Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 363, 184 P.3d 378, 384 (2008) (explaining that workers' compensation statutes will be interpreted according to their plain meaning). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Eva Garcia-Mendoza, Settlement Judge
Howard Roitman & Associates
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk

²In light of our resolution of this appeal, we need not reach the issues of whether NRCP 9(b)'s particularity requirement was satisfied or whether appellant's claim was unripe due to any failure to exhaust administrative remedies. Cf. Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2008) (explaining that this court will affirm a decision of the district court that reached the right result, albeit for the wrong reasons). While the parties did not address NRS 616D.030 in their initial appellate briefing, we cannot ignore the Legislature's direct limitation of liability here. See Madera, 114 Nev. at 257, 956 P.2d at 120 (stating that "[w]ith the enactment of NRS 616D.030, the legislature accepted this court's invitation to limit the potential liability of workers' compensation insurers by narrowing the remedies available to an aggrieved party").