

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Appellant,
vs.
RAYMOND COLLUP,
Respondent.

No. 56433

FILED

DEC 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Anderson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court judgment in a tort action. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Respondent Raymond Collup drove his truck into a fence while intoxicated on March 20, 2006. While being placed in a prisoner transport vehicle, officers from the Reno Police Department (the Department) were unable to fasten the seatbelt around Collup. Consequently, Collup sustained injuries to his face while traveling in the vehicle driven by Officers Anthony Elges and Amanda Hartshorn.

On June 28, 2007, Collup filed a complaint for personal injury in district court, naming appellant City of Reno and the Department as defendants. Collup alleged that the City and Department were negligent and reckless while he was in their custody. The City removed the case to federal court. Ultimately, the federal court dismissed the complaint.

Subsequently, on March 20, 2008, before the statute of limitations expired, Collup filed another complaint for personal injury in district court, this time against Doe defendants despite previously naming the City as a defendant in the federal case. Although Collup omitted the City as a defendant in the original complaint, he specifically disclosed that

he “was placed into police custody as a result of a traffic accident and was being transported in a Reno Police Department vehicle by RENO POLICE DEPARTMENT employees. . . .” Thereafter, on April 11, 2008, after the statute of limitations expired, Collup filed an amended complaint replacing Doe defendants with the City and Officers Elges and Hartshorn.

In response, the City filed a motion to dismiss, pursuant to NRCP 12(b)(5), for failure to state a claim upon which relief may be granted, contending that the statute of limitations ran prior to the filing of the amended complaint because Collup failed to exercise reasonable diligence in ascertaining the City’s true identity and, thus, failed to satisfy the third requirement under Nurenberger Hercules-Werke v. Virostek, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991). The district court entered an order denying the City’s motion to dismiss, finding that Collup was diligent in ascertaining the true identity of the City by promptly amending his complaint as soon as he was aware of the officers responsible for transporting him in the prisoner transport vehicle in satisfaction of NRCP 10(a).

After a three-day bench trial, the district court found in favor of Officers Elges and Hartshorn, dismissing the claims against the officers in their individual capacities. However, the district court concluded that the City was negligent because it failed to provide a safe transport to prison while Collup was in its custody. The district court awarded damages to Collup in the amount of \$32,744.29.¹

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

On appeal, the City contends that the district court erred in denying its motion to dismiss because Collup amended the original complaint through a Doe pleading under NRCP 10(a) after the statute of limitations had expired. We agree, and therefore reverse the district court's erroneous decision because Collup violated NRCP 10(a) by failing to include the City as a defendant in the original complaint.²

The district court erred in finding that Collup was diligent in ascertaining the true identity of the City

The City argues that the district court's judgment in Collup's favor should be reversed because the amended complaint that named the City as a defendant was not filed until after the expiration of the limitations period. The City maintains that Collup violated NRCP 10(a) as he deliberately chose not to name it as a party even though he was completely aware of its identity evidenced by the fact that he named the City as a party in the federal case.

"Appellate issues involving a purely legal question are reviewed de novo." Wyeth v. Rowatt, 126 Nev. ___, ___, 244 P.3d 765, 775 (2010).

Pursuant to NRCP 10(a), "[a] party whose name is not known may be designated by any name, and when the true name is discovered, the pleading may be amended accordingly." While the substitution is pending, the statute of limitations is effectively tolled according to a legal

²The City also argues that the district court erred in entering a judgment in favor of Officers Elges and Hartshorn and against the City under a respondeat superior theory of liability, and that it is entitled to governmental immunity under NRS 41.032(2) and NRS 41.033. In light of our conclusion, we need not address these contentions.

fiction that the unnamed entity is a party to the proceedings. Nurenberger, 107 Nev. at 882, 822 P.2d at 1106; see Hill v. Summa Corporation, 90 Nev. 79, 81, 518 P.2d 1094, 1095 (1974).³

We focus our attention on the third Nurenberger factor—whether Collup exercised reasonable diligence in ascertaining the true identity of the City and promptly moved to amend the complaint in order to substitute the actual for the fictional. 107 Nev. at 881, 822 P.2d at 1106. In other words, we consider whether Collup proactively sought to identify the City “in order for an amendment made pursuant to NRCP 10(a) to relate back to the filing date of the original complaint.” Sparks v. Alpha Tau Omega Fraternity, 127 Nev. ___, ___, 255 P.3d 238, 243 (2011).

It is abundantly clear from the record that Collup had knowledge that the City was involved in the conduct which led to his injuries by including the City as a defendant in the federal case and by

³ To utilize NRCP 10(a), Collup must satisfy a three-part test:

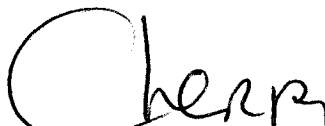
(1) pleading fictitious or doe defendants in the caption of the complaint; (2) pleading the basis for naming defendants by other than their true identity, and clearly specifying the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based; and (3) exercising reasonable diligence in ascertaining the true identity of the intended defendants and promptly moving to amend the complaint in order to substitute the actual for the fictional.


Nurenberger, 107 Nev. at 881, 822 P.2d at 1106. “Satisfaction of all three of the aforementioned elements is necessary to the granting of an amendment that relates back to the date of the filing of the original complaint.” Id.


explicitly mentioning the Department multiple times in the original complaint. We conclude that Collup's inexplicable failure to name the City as a defendant in his original complaint demonstrates a lack of reasonable diligence. See id., 127 Nev. at ___, 255 P.3d at 243 (providing that "[t]he reasonable diligence requirement is intended to guard against the abuse of Doe and Roe defendants as placeholders during the commencement of litigation and 'was not intended to reward indolence or lack of diligence by giving plaintiffs an automatic method of circumventing statutes of limitations.'" (quoting Nurenberger, 107 Nev. at 881, 822 P.2d at 1105)). Therefore, the motion to dismiss should have been granted by the district court because the amended complaint that named the City as a defendant was not filed until after the expiration of the limitations period. See NRS 11.190(4).

Accordingly, we

ORDER the judgment of the district court REVERSED and we REMAND to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
Margo Piscevich, Settlement Judge
Reno City Attorney
James Andre Boles
Washoe District Court Clerk