

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER GIANAKIS,
INDIVIDUALLY, AND AS HEIR AND
SPECIAL ADMINISTRATOR OF THE
ESTATE OF MATHEW GIANAKIS,
DECEASED AND GREG GIANAKIS,
INDIVIDUALLY,

Appellants,

vs.

LONE STAR STEAKHOUSE AND
SALOON OF LAS VEGAS, INC., A
NEVADA CORPORATION,

Respondent.

No. 35208

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment and dismissing a wrongful death action, based on a finding that it is barred by workers' compensation exclusive remedy and employer immunity provisions.

Appellants Alexander and Greg Gianakis argue on appeal that the district court erred in granting summary judgment in favor of respondent Lone Star Steakhouse and Saloon of Las Vegas, Inc. Specifically, the Gianakises argue that statements made by Marlo Thomas create an issue of material fact as to whether Mathew Gianakis's murder arose out of and in the course of his employment with Lone Star. We disagree.

Viewing the evidence in a light most favorable to the Gianakises,¹ we conclude that this case raises no issue of material fact as to whether Mathew was murdered by Thomas out of animosity or ill will wholly disconnected to his employment with Lone Star.²

We conclude that even if Mathew was a verbal aggressor during the robbery and attack, it remains undisputed that Thomas did not

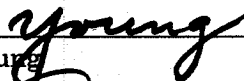
¹See NRCP 56(c).

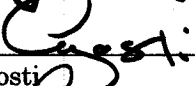
²See McCull v. Scherer, 73 Nev. 226, 230, 315 P.2d 807, 809 (1957); Hudson v. Roberts, 270 P.2d 837, 840 (Idaho 1954).

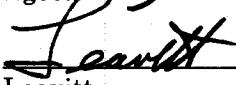
go to Lone Star to specifically murder Mathew. In other words, there is no evidence to suggest that Mathew was murdered by Thomas because he was Mathew.³ Rather, the facts show that Mathew would not have been murdered by Thomas had he not been an employee of Lone Star and working on the unfortunate morning of April 15, 1996.

The Nevada Industrial Insurance Act ("NIIA") provides the sole remedy against an employer for injuries, including death,⁴ which arise out of and in the course of employment.⁵ Meaning, if the statute applies, NIIA grants an employer immunity from "all other rights and remedies of the employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise, on account of such injury."⁶ In light of our holding that Mathew's murder arose out of and in the course of his employment, we conclude that Lone Star is immune from suit under NIIA and is entitled to judgment as a matter of law. Accordingly, we

AFFIRM the order granting summary judgment.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Mark R. Denton, District Judge
Kirk T. Kennedy
Barron Vivone Holland & Pruitt Chtd.
Clark County Clerk

³See McCull, 73 Nev. at 231, 315 P.2d at 810.

⁴See Heitman, 87 Nev. at 203, 484 P.2d at 573.

⁵See NRS 616A.020(1); NRS 616B.612; Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 269, 984 P.2d 756, 758 (1999); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029-30 (1997), modified in part by Harris v. Rio Hotel & Casino, 117 Nev. __, __, 25 P.2d 206, 213 (2001); Outboard Marine Corp. v. Schupbach, 93 Nev. 158, 164, 561 P.2d 450, 454 (1977); Frith v. Harrah South Shore Corp., 92 Nev. 447, 452, 552 P.2d 337, 340 (1976); LTR Stage Line v. Nev. Ind. Comm'n, 81 Nev. 626, 628, 408 P.2d 241, 243 (1965).

⁶NRS 616A.020(1).