

IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD GOODGASELL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
LA DOLCE VITA OWNERS
ASSOCIATION, A NEVADA
CORPORATION; AND BENCHMARK
ASSOCIATION SERVICES,
Real Parties in Interest.

No. 60351

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Maline
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order granting summary judgment and denying petitioner leave to intervene based on the statute of limitations.

After petitioner Gerald Goodgasell received workers' compensation benefits for injuries incurred on the job, Goodgasell's employer and the employer's workers' compensation administrator (insurer) sued real parties in interest, La Dolce Vita Owners Association and Benchmark Association Services, based on the insurer's NRS 616C.215 right of subrogation. The complaint alleged that real parties in interest negligently injured Goodgasell, which directly resulted in the payment of workers' compensation, causing the insurer damages. Several months later, after NRS 11.190(4)(e)'s two-year limitations period had expired, Goodgasell filed a complaint in joinder, seeking damages for real

parties in interest's negligence. Real parties in interest moved for summary judgment, asserting that Goodgasell's complaint was untimely filed after the limitations period had run. Goodgasell opposed the motion and also moved for leave to intervene under NRS 12.130 and NRCP 24. The district court granted summary judgment on the basis that Goodgasell failed to timely file a complaint. Goodgasell then filed this writ petition, seeking an order directing the district court to grant him leave to intervene. Real parties in interest timely filed an answer, and Goodgasell replied.

A writ of mandamus is available to compel the performance of a legal duty or to control an arbitrary or capricious exercise of discretion. NRS 34.160; International Game Tech. v. Dist. Ct., 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Such writs will issue only if the petitioner has no plain, speedy, and adequate legal remedy. NRS 34.170. Because, generally, no speedy and adequate legal remedy exists when a petitioner is denied leave to intervene, petitions for a writ of mandamus are an appropriate means of invoking this court's review of an order denying intervention, American Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1234, 147 P.3d 1120, 1124 (2006), and thus, we will exercise our discretion to consider this petition.

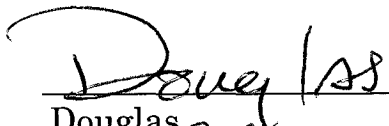
NRS 11.190(4)(e) provides, in pertinent part, that any action sounding in negligence must "be commenced" within two years. The action here was "commenced" when the employer filed suit. Thus, typically, because complaints in intervention are filed after the commencement of a suit, they are not subject to the statute of limitations. See First Ins. Co. of Hawaii v. A&B Properties, 271 P.3d 1165, 1176 (Haw. 2012) (citing Kepo'o v. Kane, 103 P.3d 939, 954-55 (Haw. 2005);

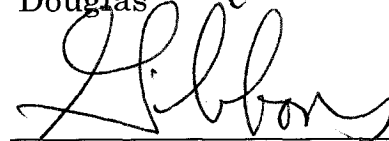
Mississippi Food and Fuel v. Tackett, 778 So. 2d 136, 142 (Miss. Ct. App. 2000)). Certainly this is true in Nevada workers' compensation subrogation cases. American Home Assurance, 122 Nev. at 1240 n.39, 147 P.3d at 1128 n.39 ("Because the insurer and the injured worker share one cause of action, the expiration of the applicable limitations period does not bar intervention."). As recognized by the Hawaii Supreme Court, "[i]t is almost uniformly held that intervention is permissible even after the statute of limitations has run, if the action intervened in was itself timely brought, whether the intervention is by the insurer in the employee's suit, or by the employee in the insurer's suit." First Ins. Co. of Hawaii, 271 P.3d at 1179 (quoting Arthur Larson, 7 Larson's Workers' Compensation Law § 120.03[3] (2003) (citing Home Ins. Co. v. S. Cal. Rapid Transit Dist., 241 Cal. Rptr. 858 (Ct. App. 1987); Jordan v. Super. Ct., 172 Cal. Rptr. 30 (Ct. App. 1981); Geneva Const. Co. v. Martin Transfer & Storage Co., 114 N.E.2d 906 (1953); Payne v. Dundee Mills, Inc., 510 S.E.2d 67, 68 (Ga. Ct. App. 1999); Franks v. Sematech, Inc., 936 S.W.2d 959 (Tex. 1997)), and agreeing with that statement). Thus, the district court incorrectly denied intervention and dismissed Goodgasell from the action based on the statute of limitations.

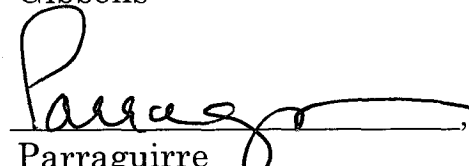
Nonetheless, real parties in interest argue that Goodgasell cannot intervene because he has no interest in the subrogation action. Black's Law Dictionary defines subrogation as "[t]he substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor." Black's at 1467 (8th ed. 2004). Likewise, this court has recognized that an insurer's interest in enforcing subrogation rights "arises out of the same events as do an injured worker's claim" and that the injured worker and

the insurer "share" the cause of action. See American Home Assurance, 122 Nev. at 1239-40, 147 P.3d at 1127-28. Moreover, under NRS 616C.215(4), Goodgasell is entitled to any recovery remaining after the workers' compensation benefits are repaid. Because the insurer's complaint ostensibly seeks damages related to their payment of workers' compensation benefits, only, it appears both that its action impedes Goodgasell's ability to protect his interests and that those interests may not be adequately represented by the insurer. NRAP 24(a)(2). Accordingly, it appears that Goodgasell has a demonstrated interest in participating in the action below to maximize any recovery. As real parties in interest do not otherwise contest Goodgasell's assertion that the NRS 12.130 and NRCP 24 requirements have been met, we conclude that the district court arbitrarily and capriciously denied Goodgasell leave to intervene, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to vacate its summary judgment and grant petitioner leave to intervene.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
David R. Ford
David L. Riddle & Associates
Eighth District Court Clerk