

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35612

SCHUFF STEEL COMPANY; AND SCHUFF
STEEL COMPANY, A DELAWARE
CORPORATION NOT QUALIFIED IN
NEVADA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE MICHAEL CHERRY, DISTRICT
JUDGE,

Respondents,

and

CAROL DETMER, AN INDIVIDUAL; AND
CAROL DETMER, AS ADMINISTRATRIX OF
THE ESTATE OF ROBERT DETMER,
DECEASED,

Real Party in Interest.

FILED

MAY 24 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of prohibition or mandamus challenges a district court order denying petitioners' motion for summary judgment, and for dismissal of negligence claims against petitioners, based upon the exclusive remedy and employer immunity provisions of Nevada's workers' compensation law. Having reviewed the petition, answer and reply, we conclude that our intervention in this matter by way of extraordinary relief is warranted.¹

¹While it is this court's general policy to decline consideration of writ petitions that challenge district court orders denying motions to dismiss or for summary judgment, we have allowed exceptions when considerations of sound judicial economy and administration militate in favor of granting such petitions. *Smith v. District Court*, 113 Nev. 1343, 950 P.2d 280 (1997). One such situation exists when no factual disputes exist and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule. *Smith*, 113 Nev. at 1345, 950 P.2d at 281. With respect to the underlying negligence claims, this is such a case.

00-08731

The law is well-established that workers' compensation is the sole remedy an injured employee and his dependents have against his employer when the injury results from an accident arising out of and in the scope of his employment. Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029-30 (1997); see NRS 616A.020(1) ("The rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive, except as otherwise provided in those chapters, of all other rights and remedies . . . at common law or otherwise, on account of such injury."); NRS 616B.612(3)² ("the employer or any insurer of the employer is relieved from other liability for recovery of damages or other compensation for those personal injuries unless otherwise provided by the terms of chapters 616A to 616D, inclusive").

Here, it is undisputed that the employee's death resulted from an accident arising out of and in the scope of his employment. Robert Detmer died in May 1997 when he fell while working for Schuff Steel as an ironworker at the MGM Las Vegas construction site. The real party in interest, Robert's wife Carol Detmer, filed a workers' compensation claim for death benefits. Ordinarily, Detmer would be entitled to workers' compensation death benefits under NRS 616C.505; however, the forfeiture provision of NRS 616C.230(1)(d) precludes the payment of compensation for an injury proximately caused by the employee's use of a controlled

²NRS 616B.612 was amended in 1999, and subsection (3) became subsection (4); however, the quoted language was not changed.

substance.³ Detmer's claim was denied because Robert's toxicology report was positive for methamphetamine and amphetamine, he did not have prescriptions for either drug, and Detmer failed to rebut the presumption that the drugs proximately caused Robert's fatal fall.⁴

Following the denial of her workers' compensation claim, Detmer filed a wrongful death complaint against Schuff Steel and others, alleging negligence and seeking compensatory damages. Detmer subsequently filed an amended complaint, which adds a claim that Schuff Steel committed an intentional tort and a request for punitive damages. Schuff Steel moved for summary judgment and dismissal of the negligence claims, based on the exclusive remedy and employer immunity provisions of Nevada's workers' compensation law.⁵ The district court was obligated to grant the motion and dismiss the negligence claims because there are no genuine issues of material fact, and Schuff Steel was entitled to judgment as a matter of law. See NRCP 56(c).

³NRS 616C.230(1)(d) provides:

Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury [] [p]roximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

⁴The claim denial was upheld on administrative appeal, and in October 1998 Detmer filed a petition for judicial review. The matter is currently pending in the district court (District Court Case No. A395123). Should the decision be reversed, it would not affect this writ proceeding; Detmer's recovery and acceptance of death benefits would bar all her tort claims against Schuff Steel. See *Advanced Countertop Design v. Dist. Ct.*, 115 Nev. 268, 984 P.2d 756 (1999).

⁵Schuff Steel, a subcontractor, joined in the principal contractor's motion. Schuff Steel is the only remaining defendant.

Detmer contends the exclusive remedy and employer immunity provisions cannot and do not apply, because workers' compensation provides no remedy in this case.⁶ Thus, Detmer argues, she is entitled to pursue her negligence claims against Schuff Steel because she has not received any workers' compensation benefits for Robert's death.

Detmer's argument is not persuasive. First, the argument erroneously equates remedy with recovery. Workers' compensation provides a remedy, but it does not provide a recovery because Robert, by illegally using controlled substances, forfeited his workers' compensation benefits. NRS 616C.230(1)(d). Second, Detmer's interpretation of workers' compensation law would reward the illegal use of controlled substances by allowing the drug abusing injured employee (or his dependents) to circumvent the exclusive remedy and employer immunity provisions of the law. Neither the purpose nor the structure of Nevada's workers' compensation law supports such a result.

We conclude the district court manifestly abused its discretion in refusing to dismiss Detmer's negligence claims against Schuff Steel. Accordingly, we grant the petition. See NRS 34.160; NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (a writ of mandamus is available to control an arbitrary or capricious exercise of discretion). The clerk of this court shall issue a writ of mandamus compelling the district court to vacate its order denying summary judgment, and to grant petitioners' motion for

⁶Detmer also argues the Nevada Industrial Insurance Act does not apply because Schuff Steel did not provide and secure compensation, which NRS 616B.612 requires as a condition of employer immunity. This argument is meritless, as it is undisputed that Schuff Steel had a workers' compensation policy; Schuff Steel is not required to guarantee that Robert would qualify for benefits.

summary judgment and dismiss the negligence claims against petitioners.

It is so ORDERED.⁷

Young J.
Young
Agosti J.
Agosti
Leavitt J.
Leavitt

cc: Hon. Michael A. Cherry, District Judge
Kummer Kaempfer Bonner & Renshaw
Craig P. Kenny & Associates
Clark County Clerk

⁷In light of this disposition, we deny petitioners' motion for a stay.