IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY BROWN,
Appellant,
vs.
ONE WAY DRUG, LLC, D/B/A PARTELL SPECIALTY PHARMACY,
Respondent.

No. 66152

FILED

AUG 10 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting summary judgment in a contract and tort action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Appellant Timothy Brown was an employee and Class B member of respondent One Way Drug, LLC d/b/a Partell Specialty Pharmacy ("One Way").[1] When Brown acquired his membership interest in One Way, he executed an operating agreement. In relevant part, the operating agreement provides that upon termination for cause a Class B member's interest will automatically terminate and cease to exist without the payment of any consideration, and any capital contributions made by the Class B member will be forfeited as damages. After One Way terminated Brown's employment "for cause," Brown filed a claim for unemployment benefits. Brown's claim was denied, and an appeals referee affirmed the denial based on findings that Brown engaged in misconduct. Brown subsequently sued One Way for its alleged failure to honor its obligations to him as the owner of a Class B membership interest

[1]We do not recount the facts except as necessary to our disposition.

and the alleged conversion of his capital contribution. One Way maintained that Brown was terminated for cause and, thus, Brown's membership interest automatically terminated and his capital contribution was forfeited. Based on the appeals referee's findings, the district court granted summary judgment in One Way's favor and denied Brown's countermotion for summary judgment. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.*

Here, the appeals officer's findings were neither binding nor admissible in the underlying action, *see* NRS 612.533; *Britton v. City of North Las Vegas*, 106 Nev. 690, 692 n.1, 799 P.2d 568, 569 n.1 (1990) ("Res judicata does not apply to factual determinations of the employment security department."), and, absent those findings, genuine issues of material fact preclude summary judgment.[2] *See* NRCP 56(c); *Wood v.*

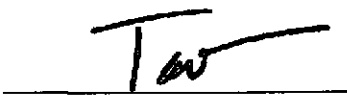
[2]Although neither Brown nor One Way addressed NRS 612.533 until we ordered supplemental briefing regarding the statute's application in this matter, we note that this court may consider relevant issues sua sponte in order to prevent plain error. *See Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986). Moreover, we have considered One Way's argument that NRS 612.533 should not apply and conclude it is without merit.

Safeway, Inc., 121 Nev. at 729, 121 P.3d at 1029.

Accordingly, we

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

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Gloria Sturman, District Judge
Kathleen J. England, Settlement Judge
Law Office of Lisa Rasmussen
Greenberg Traurig, LLP/Las Vegas
Eighth District Court Clerk