IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND EVANS,
Appellant,
vs.
WELTRANS NV, LLC,
Respondent.

No. 78034-COA

ORDER OF AFFIRMANCE

Raymond Evans appeals from a district court order dismissing a complaint in a tort action. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Evans filed a complaint for negligence against respondent Weltrans NV, LLC (Weltrans), alleging that he sustained injuries in an automobile collision while working for Weltrans as a truck driver. Evans further alleged that Weltrans breached its duty to provide and maintain workers' compensation insurance, thereby entitling him to a presumption under NRS 616B.636 that his injuries were caused by Weltrans' negligence. Ultimately, Weltrans moved for summary judgment, arguing that Evans' complaint failed as a matter of law because the only act of negligence he alleged on Weltrans' part was its failure to maintain workers' compensation insurance, which itself is not actionable. Weltrans further argued that the statutory presumption of negligence had been rebutted as it was Evans' own conduct (rear-ending a semi because he reached down for a cigarette), not any act by Weltrans, that caused his injuries. The district court agreed with Weltrans, granted the motion over Evans' opposition, and dismissed the complaint without prejudice. This appeal followed.

Although the district court granted Weltrans' motion for summary judgment, we construe the district court's order as a dismissal of the complaint for failure to state a claim upon which relief can be granted because the court concluded that Evans' complaint fails as a matter of law and dismissed the case without prejudice. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (noting that the appellate courts will generally construe a district court's order in terms of what it "actually *does*, not what it is called"); *see also* NRCP 12(b)(5). We review an order dismissing a complaint for failure to state a claim de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Our review is rigorous, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissal for failure to state a claim is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

Generally, an employer that carries workers' compensation insurance is otherwise shielded from liability for its employees' work-related personal injuries. NRS 616B.612(4). However, NRS 616B.636 provides in relevant part that if an employer fails to provide workers' compensation insurance, an injured employee "may bring an action at law against the employer for damages as if [Nevada's workers' compensation law] did not apply." NRS 616B.636(1). It further provides that an employer cannot escape liability in such an action through various affirmative defenses, including that "[t]he employee was negligent, unless it appears that such negligence was willful and with intent to cause injury or the injured party was intoxicated." NRS 616B.636(3). Finally, it provides that, in such actions, "it is presumed that the injury to the employee was the

result of the negligence of the employer and that such negligence was the proximate cause of the injury, and the burden of proof rests upon the employer to rebut the presumption of negligence." *Id.*

On appeal, Evans argues that the district court erroneously relied on his own negligence—in contravention of NRS 616B.636(3)—in concluding that Weltrans rebutted the statutory presumption of negligence.[1] Evans also argues that the district court improperly shifted the burden of proof and required him to prove negligence rather than requiring Weltrans to prove that it was not negligent. But Evans misconstrues the district court's decision; it was not Evans' supposed negligence or his failure to prove Weltrans' negligence, but instead the total lack of any factual allegation on Evans' part as to how Weltrans supposedly engaged in negligent conduct that caused the injuries he sustained in the collision, which rendered his complaint deficient as a matter of law. *See Liston v. Las Vegas Metro. Police Dep't*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995) (noting that Nevada's notice pleading standard requires plaintiffs to set forth facts supporting a legal theory); *Sherburne v. Miller*,

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[1]Because the district court correctly determined that the allegations in Evans' complaint failed to state a claim upon which relief can be granted, it did not need to address whether Weltrans rebutted the statutory presumption of negligence. Confusingly, although the district court ultimately dismissed Evans' complaint without prejudice, it nonetheless commented on the merits of whether Weltrans rebutted the statutory presumption. Because any resolution of that issue is inconsistent with the district court's express determination to dismiss this matter without prejudice, the district court's commentary on the merits of this presumption issue shall not have preclusive effect in any future litigation between the parties. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054 n.27, 194 P.3d 709, 713 n.27 (2008) (noting that a valid final judgment for purposes of preclusion "does not include a case that was dismissed without prejudice").

94 Nev. 585, 588, 583 P.2d 1090, 1092 (1978) (applying the predecessor to NRS 616B.636 and noting that employers without workers' compensation insurance "cannot be held liable when there is a complete absence of negligence on [their] part").

To the extent Evans bases his claim on Weltrans' alleged failure to carry workers' compensation insurance, he is essentially arguing that NRS 616B.636 gives rise to a private cause of action against an employer for such failure. However, NRS 616B.636(1) merely provides that an employee can sue an uninsured employer in an action at law *as if the workers' compensation law did not apply*. If that law did not apply, employers would not be required to provide workers' compensation insurance in the first place, meaning their failure to do so would not constitute a breach of any duty that is actionable at law. *See Pershing Quicksilver Co. v. Thiers*, 62 Nev. 382, 389, 152 P.2d 432, 436 (1944) ("[T]he [workers' compensation] statutes do give to a workman what he never had before, namely the right to compensation for injuries suffered in employment, regardless of the negligence of the employer."). Moreover, nothing in the text of NRS 616B.636 otherwise indicates that the Legislature intended to provide a private cause of action for failing to carry workers' compensation insurance. *See Richardson Constr., Inc. v. Clark Cty. Sch. Dist.*, 123 Nev. 61, 65, 156 P.3d 21, 23 (2007) (explaining that "when a statute does not expressly provide for a private cause of action, the absence of such a provision suggests that the Legislature did not intend for the statute to be enforced through a private cause of action").

Thus, in the absence of any factual allegation that Weltrans engaged in conduct that would constitute actionable negligence, Evans failed to set forth a viable legal claim. *See Liston*, 111 Nev. at 1578, 908

P.2d at 723; *see also Clark Cty. Sch. Dist. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1279 (2017) (noting that a plaintiff asserting negligence must establish damages actually and proximately caused by the defendant's breach of a duty owed to the plaintiff); *Sherburne*, 94 Nev. at 588, 583 P.2d at 1092.[2] We therefore affirm the district court's order dismissing Evans' complaint without prejudice on grounds that his negligence claim fails as a matter of law.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Luke A. Busby
Weltrans NV, LLC
Washoe District Court Clerk

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[2]We recognize that under NRS 616B.636(3), a plaintiff does not carry an evidentiary burden to prove negligence; the initial burden rests instead on the employer to rebut the presumption, even when the plaintiff has produced no evidence at all to support an inference of negligence. *See Sherburne*, 94 Nev. at 588, 583 P.2d at 1092. But where there is no *allegation* of actionable negligence on an employer's part, there are no alleged facts for the employer to rebut. *See Liston*, 111 Nev. at 1578, 908 P.2d at 723.