

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTCLIFF RESTAURANTS, LLC, D/B/A
DOC HOLLIDAY'S SALOON,

No. 37606

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK, AND THE
HONORABLE JEFFREY D. SOBEL,
DISTRICT JUDGE,

Respondents,

and

FRED LOKKEN AND JOYCE LOKKEN, AS
SPECIAL ADMINISTRATORS OF THE
ESTATE OF SHELLY L. LOKKEN; AND
BRETT ASHTON BAKER, A MINOR AND
HEIR OF SHELLY L. LOKKEN, BY AND
THROUGH FRED LOKKEN AND JOYCE
LOKKEN, HER GUARDIANS AND LEGAL
CUSTODIANS,

Real Parties in Interest.

FILED

JUN 20 2001

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges the district court's denial of petitioner's motion for summary judgment and refusal to dismiss petitioner from the underlying tort action, based upon workers' compensation exclusive remedy and immunity provisions. The real parties in interest have not responded to our order directing them to file an answer against issuance of the writ. While we rarely consider writ petitions that challenge district court orders denying motions to dismiss or for summary judgment, we may do so to promote sound judicial economy and administration in cases such as this, when no factual disputes exist and the district court is obligated to dismiss an action pursuant to clear authority.¹

¹Smith v. District Court, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997).

The facts underlying petitioner's motion for summary judgment are not in dispute. Shelly Lokken was murdered in May 1998 while working for petitioner. The real parties in interest, Shelly's parents Fred and Joyce Lokken as special administrators of her estate, and Shelly's daughter Brett Ashton Baker through the Lokkens as her guardians, submitted workers' compensation claims, which were accepted; the estate received \$5,000 for funeral expenses and Brett receives monthly survivor benefits.

In September 1998 the Lokkens filed a common law tort action against petitioner and others. The claims against petitioner are for negligence, negligent infliction of emotional distress, intentional infliction of emotional distress and loss of consortium. Petitioner moved for summary judgment, contending that it was immune from suit under Nevada's workers' compensation laws because it was Shelly's employer, and the Lokkens had claimed and accepted all available workers' compensation benefits. The district court should have granted the motion.

The law is well-established that workers' compensation is the sole remedy an injured employee has against an employer when the injury results from an accident arising out of and in the scope of employment.² Although an injured employee may sue an employer for an intentional tort if circumstances warrant, the employee's acceptance of a final workers' compensation award extinguishes all common law claims the employee might have had against the employer, including intentional torts.³

²Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 984 P.2d 756 (1999); see NRS 616B.612(4) (providing that the employer is relieved from other liability for recovery of damages or other compensation for industrial injuries).

³Advanced Countertop Design, 115 Nev. 268, 984 P.2d 756.


Workers' compensation is also the sole remedy available to the employee's personal or legal representatives, dependents and next of kin. NRS 616A.020(1) expressly provides:


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 of the employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise, on account of such injury.

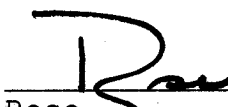
The Lokkens' acceptance of workers' compensation benefits extinguished all their common law claims against petitioner. The district court was obligated to grant petitioner's motion for summary judgment because there are no genuine issues of material fact, and petitioner was entitled to judgment as a matter of law.⁴

Accordingly, we grant this petition.⁵ The clerk of this court shall issue a writ of mandamus compelling the district court to grant petitioner's motion for summary judgment.

It is so ORDERED.


Shearing, J.


Agosti, J.


Rose, J.

⁴See NRCP 56(c).

⁵See 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).

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cc: Hon. Jeffrey D. Sobel, District Judge
Cohen, Johnson, Day, Jones & Royal
Gary S. Lipsman
Clark County Clerk