IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES BICE; AND SHERYL BICE, AS HEIRS AND CO-SPECIAL ADMINISTRATORS OF THE ESTATE OF JEREMY BICE,
Appellants,
vs.
BALDWIN DEVELOPMENT LLC, A DOMESTIC LIMITED LIABILITY COMPANY; AGATE, INC., A FOREIGN CORPORATION; AND BLAKE HOLMSTEAD, AN INDIVIDUAL,
Respondents.

No. 86674

FILED
AUG 14 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Chapman Auto Group contracted with respondent Agate, Inc., to construct an automobile dealership in Las Vegas. Agate then contracted with Baldwin Development to complete grading and construction work. Agate also contracted with Ninyo & Moore Geotechnical and Environmental Sciences Consultants (N&M) to complete soil testing and inspection. Agate was statutorily required to ensure that both Baldwin and N&M's employees had workers' compensation insurance.

N&M employed decedent Jeremy Bice to conduct tasks including soil testing. The decedent was performing soil inspections and testing on the Chapman site when Baldwin employee Blake Holmstead ran him over with a motor grader. The decedent succumbed to his injuries later that day and died.

The heirs and administrators of the decedent's estate (collectively, Bice) filed a complaint against Agate, Baldwin, and Holmstead for six causes of action. Baldwin filed a motion for summary judgment alleging that Bice's claims were precluded based on the Nevada Industrial Insurance Act (NIIA), which Agate joined. The district court granted summary judgment. Bice appeals. We affirm.

Standard of Review

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when there is no genuine dispute of material facts. *Id.* All judgment, evidence, and any reasonable inferences must be viewed in the light most favorable to the nonmoving party when reviewing a motion for summary judgment. *Id.*

We affirm the district court's grant of summary judgment

Bice argues that the district court erred in granting summary judgment because Agate, Baldwin, and Holmstead were not immune from tort actions pursuant to the NIIA, as they were neither the decedent's statutory employers nor his co-employees. Agate, Baldwin, and Holmstead argue that the district court properly granted summary judgment because N&M was a subcontractor and independent contractor, and therefore immune under the NIIA.

The NIIA is codified as NRS Chapters 616A through 616D. NRS 616A.005. Under the NIIA, certain employers are required to provide worker's compensation insurance. NRS 616B.612(1). Workers' compensation insurance provides both medical and disability coverage for death or injury that arises out of or is sustained in the course of

employment. *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 1218, 148 P.3d 684, 687 (2006); NRS 616A.020(2); NRS 616B.612(1). "An injury is said to arise out of one's employment when there is a casual connection between the employee's injury and the nature of the work or workplace." *Wood*, 121 Nev. at 733, 121 P.3d at 1032.

In *Gorsky*, we determined that the injured worker's slip and fall did not arise from his work when he "fell as result of [a] preexisting condition" and that no evidence demonstrated that his work environment caused the fall, such as an external force or obstacle on the floor. *Id.* at 605, 939 P.2d at 1046.

In exchange for requiring certain employers to provide workers' compensation insurance, "the NIIA's exclusive remedy provision, NRS 616A.020, immunizes those employers and their employees from lawsuits connected with another employee's industrial injury." *Richards*, 122 Nev. at 1218, 148 P.3d at 687. This includes "claims for torts damages in connection with workplace injuries." *Lipps v. S. Nev. Paving*, 116 Nev. 497, 499, 998 P.2d 1183, 1185 (2000) (citing predecessor to NRS 616C.215(2)(a)). These employers are considered statutory employers under the NIIA. *Richards*, 122 Nev. at 1218, 148 P.3d at 687. The NIIA provides the "exclusive remedy of any employee of a subcontractor injured as a result of the negligence of another subcontractor's employee working for the same principal contractor because they are considered to be working in the same employ; hence, they are statutory co-employees." *Lipps*, 116 Nev. at 499, 998 P.2d at 1185 (internal quotation marks omitted). These injured employees, however, may sue anyone other than statutory employers and their employees. *Richards*, 122 Nev. at 1218, 148 P.3d at 687.

"A company that 'has in service any person under a contract of hire,' is that person's statutory employer under the NIIA." *Richards*, 122 Nev. at 1218, 148 P.3d at 687 (quoting NRS 616A.230(2)). Furthermore, principal contractors are generally considered to be statutory employers of their subcontractors, independent contractors, and the employees of either, for purposes of the NIIA. NRS 616A.210(1). To be a principal contractor, one must "1. [c]oordinate[ ] all the work on an entire project; 2. [c]ontract[ ] to complete an entire project; 3. [c]ontract[ ] for services of any subcontractor or an independent contractor; or 4. [be] responsible for payment to any subcontractors and independent contractors." NRS 616A.285. Subcontractors include independent contractors. NRS 616A.320. A subcontractor is a party who not only contracted with the original contractor, but also one "whose contract is subordinate to a previous agreement, regardless of whether it is the original or general contract." *Stolte, Inc. v. Eighth Jud. Dist. Ct.*, 89 Nev. 257, 259, 510 P.2d 870, 871 (1973) (internal quotation marks omitted). An independent contractor "renders service for a specified recompense for a specified result, under the control of the person's principal as to the result of the person's work only and not as to the means by which such result is accomplished." NRS 616A.255.

We affirm the district court's conclusion that the workers' compensation statute precludes Bice's claims. We first determine that Bice's claims were covered by workers' compensation insurance because Bice's claims arose out of the decedent's employment. Unlike in *Gorsky* where Gorsky's slip and fall was a result of a preexisting condition, the complaint alleged that the decedent's accident was a direct result of the work environment. Because Bice's claims arose out of the decedent's

employment and from injuries sustained within the course of his employment, they are covered by workers' compensation insurance.

We next affirm that workers' compensation is the decedent's exclusive remedy because Bice's claims are the type of claims that are immunized under the statute. Bice raised five negligence claims: negligence, gross negligence, negligence per se, negligent hiring, and negligent entrustment. The general negligence claims, negligence and gross negligence, are precluded because they allege negligent conduct and arise from the incident, so they fall within the workers' compensation structure. *See Fanders v. Riverside Resort & Casino, Inc.*, 126 Nev. 543, 550 n.3, 245 P.3d 1159, 1164 n.3 (holding that because the negligence claims arose out of the course of employment and "alleged negligent conduct, they would be covered by the NIIA, which would be [the worker's] sole remedy to those claims"). The negligent hiring and negligent entrustment claims are similarly precluded because they arise from the decedent's accident and cannot be cognized outside of the scheme. They are linked to the facts of the incident and therefore precluded. *See McGinnis v. Consol. Casinos Corp.*, 94 Nev. 640, 642, 584 P.2d 702, 703 (1978) (explaining that to avoid the NIIA's "proscription against common law negligence actions," the injured employee must allege facts that would take the claim outside the NIIA's purview). The wrongful death claim is also connected to the incident because the claim directly arose from the decedent's death. This court has held that the NIIA precludes wrongful death claims from the family of injured employees. *See Lipps*, 116 Nev. at 498, 501, 998 P.2d at 1184, 1186 (holding that the appellant's wrongful death claim was precluded under workers' compensation).

Not only are Bice's claims the type of claims that are immunized by the workers' compensation statute, but Agate, Baldwin, and Holmstead are the types of parties who are immune from Bice's claims. Here, Agate is the principal contractor because it coordinated the Chapman construction project, as Chapman contracted Agate to oversee the construction performed at the Chapman site. Agate had contracts to complete the entire project, including with Chapman, N&M, and Baldwin. Agate also contracted for services of subcontractors, including Baldwin. Finally, Agate is responsible for payment to the subcontractors and independent contractors. Next, the question is whether Baldwin and N&M are subcontractors. Neither party disputes that Baldwin is a subcontractor of Agate. Because N&M contracted with Agate, and because their contract is subordinate to that of Agate and Chapman's, N&M is a subcontractor. Furthermore, N&M is an independent contractor, which is additional evidence it is a subcontractor. *See* NRS 616A.320 (subcontractors include independent contractors). In this case, N&M's contract with Agate states that N&M's services were "intended to provide support and assistance to Agate in connection with the Project." It also states that N&M would "be responsible for the professional quality, technical accuracy, and timely completion of its services" and that if Agate directed it to, it would "promptly correct, as its sole expense, any errors, or defects in its services." Although Agate does not have expertise in soil testing, as Bice highlights, the contract provides that Agate could correct the final result. Because Agate controlled N&M's result, it fulfills this requirement, and N&M is an independent contractor. *See* NRS 616A.255 (stating that a principal controls the independent contractor's work as to "the result" of the work only).

The fact that N&M is under the control of Agate, the principal, establishes that N&M is an independent contractor, and the terms used in Agate's contract with N&M, as well as whether Agate can terminate the contract, are not relevant to that status. Although Bice argues that the district court disregarded material statements by management personnel, the statements that the decedent was not a manager do not illustrate a disputed material fact because they do not determine whether he was an independent contractor. Furthermore, although Bice argues that the district court found that Agate's ability to terminate the contract determined that N&M was an independent contractor, the order indicates that the district court only meant that the ability to terminate the contract was an example of Agate's ability to control N&M's actions. Therefore, Bice has not shown that his claims fall beyond the NIIA on this basis.

Because Baldwin and N&M are subcontractors of the same principal contractor, the decedent and Holmstead were statutory co-employees. Therefore, Bice is precluded from suing Holmstead for tort claims arising from the employment. Accordingly, Bice's tort actions against Agate, Baldwin, and Holmstead are precluded under workers' compensation laws, and we conclude the district court did not err in granting summary judgment. We further conclude that Bice's remaining claims are unavailing.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Parraguirre

cc: Hon. Nadia Krall, District Judge
Jay Young, Settlement Judge
Burg Simpson Eldredge Hersh & Jardine, P.C.\Las Vegas
Burg Simpson Eldredge Hersh & Jardine, P.C.\Colorado
Cozen O'Connor/San Diego
Hutchison & Steffen, LLC/Reno
Hutchison & Steffen, LLC/Las Vegas
Resnick & Louis, P.C./Las Vegas
Eighth District Court Clerk