

IN THE SUPREME COURT OF THE STATE OF NEVADA

LIZETH RUVALCABA GARIBAY, AS
MOTHER AND LEGAL GUARDIAN OF
MINOR CHILD BRISA TORRES
RUVALCABA, SURVIVING HEIR OF
VINCENT EDUVIJIS TORRES; AND
LIZETH RUVALCABA GARIBAY, AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF VINCENT EDUVIJIS
TORRES,

Appellants,

vs.

THE HOWARD HUGHES COMPANY,
LLC, A FOREIGN LIMITED LIABILITY
COMPANY; J.A. TIBERTI
CONSTRUCTION COMPANY, INC., A
DOMESTIC CORPORATION; AND LAS
VEGAS VALLEY WATER DISTRICT, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA,

Respondents.

No. 86929

FILED

MAR 28 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a personal injury and wrongful death action on the basis of Nevada Industrial Insurance Act immunity. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

Vincent Torres, a construction worker employed by Henderson Masonry, fell to his death from scaffolding while performing job-related duties on a work site. One month after his death, Lizeth Garibay brought this case on behalf of her nine-month-old daughter, Torres's sole heir. Respondents J.A. Tiberti Construction Co. (Tiberti), the Howard Hughes Company, LLC (Howard Hughes), and the Las Vegas Valley Water District

(Water District) (collectively, “the entities”) moved to dismiss the case, arguing all of the entities enjoyed statutory immunity under the Nevada Industrial Insurance Act (NIIA). Garibay moved to amend the complaint. The district court granted the entities’ motion to dismiss and denied Garibay’s motion to amend the complaint. This appeal followed.

We review a district court’s dismissal on the basis of immunity from suit under the NIIA de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014) (explaining that we review a district court’s conclusions of law de novo). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complainant. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Dismissal is appropriate “only if it appears beyond a doubt [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.

NIIA provides an exclusive remedy by an employee against an employer in the event of an injury or death. NRS 616A.020; *Nev. Indus. Comm’n v. Reese*, 93 Nev. 115, 126, 560 P.2d 1352, 1359 (1977). Under the NIIA, industrial employers “must procure workers’ compensation coverage for their employees.” *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 483, 25 P.3d 206, 207 (2001). In exchange for doing so, the NIIA grants immunity to those employers from “common law liability for workplace injuries.” *Id.* This immunity extends to suits brought by a deceased employee’s personal representatives and next of kin regarding workplace death or injuries that arise out of and in the course of the employee’s employment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026,

1031-32 (2005) (citing NRS 616A.020(1)-(2)). The immunity under the NIIA protects both principal contractors and landowners who hire contractors to develop property, so long as worker's compensation insurance is required by the relevant contracts. *Harris*, 117 Nev. at 493, 25 P.3d at 213.

Under the NIIA, a "principal contractor" is considered an employer of "subcontractors, independent contractors, contractors, and employees of either," and thus enjoys NIIA immunity. NRS 616 A.210; NRS 616B.603; *Harris*, 117 Nev. at 487, 25 P.3d at 210. A "principal contractor" under the NIIA is defined as a person who "1. [c]oordinates all the work on an entire project; 2. [c]ontracts to complete an entire project; 3. [c]ontracts for the services of any subcontractor or independent contractor; or 4. [i]s responsible for payment to any contracted subcontractors or independent contractors." NRS 616A.285. While the term "general contractor" is not used in the NIIA, we have previously held the statutory definition of "principal contractor" encompasses the commonly used term "general contractor." *Harris*, 117 Nev. at 484, 25 P.3d at 207 (internal quotation marks omitted); *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 1222-23, 148 P.3d 684, 690 (2006).

Here, based on the allegations in the complaint, each of the respondents were entitled to statutory immunity for their role in the water pump project. First, in her original complaint, Garibay alleged Tiberti was a general contractor on the project. Tiberti, in its role as alleged in the complaint, equated to a principal contractor under the NIIA, and is entitled to immunity. *Harris*, 117 Nev. at 484, 25 P.3d at 207. Second, Garibay alleged Howard Hughes was the developer for the project where Torres was working. In the motion to dismiss, the entities provided a sale deed—a public record—showing that Howard Hughes owned the property, which


was properly considered by the district court. As a land owner, Howard Hughes is entitled to NIIA immunity. *Id.* 117 Nev. at 493, 25 P.3d at 213. Finally, Garibay alleged the Water District was the owner or manager of the property where the construction project was located. As a political subdivision of the state, the Water District qualifies as a statutory landowner. NRS 616B.618. As a landowner, the Water District is entitled to statutory immunity under the NIIA. *Harris*, 117 Nev. at 493, 25 P.3d at 213. Because each entity qualified for immunity under the NIIA, Garibay could prove no set of facts, which, if true, would entitle her to relief, and the district court did not err in granting the motion to dismiss.

Additionally, amendment of the complaint would have been futile. In Garibay's first filed complaint, she alleged Henderson Masonry, the company that employed Torres, was a subcontractor on the project. Garibay moved to file a second amended complaint that amended the relationship alleged between Henderson Masonry and the entities, ultimately arguing the amendment changed whether the entities were entitled to immunity. We conclude the district court did not abuse its


discretion when it dismissed the second amended complaint because the proposed amendment failed to allege circumstances that would have cured the defect in the original complaint.

For these reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Maria A. Gall, District Judge
Ara H. Shirinian, Settlement Judge
Arnold & Itkin, LLP/Houston
Claggett & Sykes Law Firm
Cohan PLCC
Wolfenzon Rolle
Tyson & Mendes LLP/Las Vegas
Eighth Judicial District Court Clerk