

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA J. SMITH, INDIVIDUALLY
AND AS EXECUTRIX FOR THE
ESTATE OF RALPH E. SMITH, JR.,
Appellant,
vs.
BECHTEL NEVADA CORPORATION,
Respondent.

No. 39618

FILED

FEB 19 2004

JANETTE J. ELCOTT
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order of dismissal pursuant to NRCP 41(b).¹

The action below involved an employment dispute between Ralph E. Smith, Jr., the deceased husband of appellant, Sandra J. Smith, and respondent, Bechtel Nevada Corporation (Bechtel). Sandra Smith contends on appeal that the district court erred in rejecting claims that Bechtel breached her late husband's employment contract by changing his non-union employment status. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

For many years, EG & G Energy Measurements, Incorporated, provided comprehensive technical services for nuclear testing at the Nevada Test Site under a contract with the United States Department of Energy (DOE). For thirteen of those years, EG & G employed Ralph Smith, Jr., as a senior technician in its machine shop. EG & G provided Mr. Smith with employee benefits, including medical insurance and severance pay packages. Following EG & G's decision in 1995 not to re-

¹See NRAP 3A.

bid its technical services contract, DOE awarded a new contract to Bechtel, effective January 1996.

Bechtel extended offers of employment to numerous EG & G employees in the fall of 1995, including Mr. Smith. Mr. Smith signed an offer of employment letter with Bechtel on November 29, 1995. At this time, Mr. Smith was under the belief that Bechtel would continue his employment benefits, which EG & G previously provided. Bechtel hired Mr. Smith as a regular non-union employee; that is, his employment was not covered under a collective bargaining agreement. Mr. Smith also signed an agreement and acknowledgement of obligation with Bechtel. This agreement stated that Mr. Smith was an "at-will" employee and constituted the "full and complete agreement" between himself and Bechtel. Neither the acknowledgment nor the employment letter prohibited changes in Mr. Smith's status as a non-union employee.

Operating Engineers Local 12 (Local 12) represented numerous employees at the Nevada Test Site pursuant to a collective bargaining agreement. In May 1996, Bechtel gave Mr. Smith and other former EG & G machinists one and-a-half days to sign with Local 12 under its collective bargaining agreement, advising them that their benefits would expire if they did not sign during that time. Mr. Smith and others did not want to be covered under a union agreement because of a concern that the union could not find reemployment for technical employees in the event of lay-offs. The affected employees responded by requesting a representation election to choose the union of their choice. Although Bechtel granted this right to employees in other departments, it denied the request. Mr. Smith and his colleagues then requested that Bechtel formally lay them off and rehire them, so they could retain their

original benefits under the contract with EG & G. Bechtel likewise denied this request. Ultimately, these employees, including Mr. Smith, signed with Local 12. This had the effect of changing the employees' benefit packages from those previously enjoyed to those provided under the collective bargaining agreement. The affected employees sent letters of complaint regarding the union dispute to Bechtel, the DOE, and the United States Department of Labor.

Bechtel laid off Mr. Smith and other Bechtel employees in January 1997 due to the uncertainty of future work at the Nevada Test Site, and refused to provide the benefits that were part of the EG & G employment benefits package, including COBRA medical insurance coverage, life insurance and accrued sick time.

On April 23, 1997, Mr. Smith and twelve other Bechtel employees sued Bechtel in state district court alleging claims of state law breach of contract based on their individual employment agreements with Bechtel and alleging violations of Nevada's right to work law. The primary complaint involved the loss of benefits provided under the previous arrangement with EG & G. Bechtel attempted to remove the case to federal district court based on Section 301 of the Labor Management Relations Act (LMRA).² The removal petition was based upon the fact that Mr. Smith and his similarly situated colleagues had been union members since May of 1996, and that any dispute over benefits involved issues of interpretation of the collective bargaining agreement. As such, the dispute implicated federal preemption of state law claims under the LMRA. The federal district court concluded that removal was

²See 29 U.S.C. § 151, et seq.

improper because, when Mr. Smith entered into the employment agreement with Bechtel, he was not covered by a collective bargaining agreement and, thus, state law claims concerning the enforceability of the original non-union employment agreements remained undecided. Accordingly, the federal court remanded the case back to state court.

All of the plaintiffs, except Mr. Smith, entered into settlements with Bechtel. Unfortunately, Mr. Smith passed away before trial commenced and his estate, through Mrs. Smith, substituted into the litigation as a party on his behalf. At the bench trial, she presented individual and representative claims.

Mrs. Smith, who represented herself pro se, produced only one witness, Andrew Finch,³ and submitted little documentary evidence. Following Mrs. Smith's case-in-chief, Bechtel moved for dismissal under NRCP 41(b). The district court granted the motion and dismissed the entire action for lack of subject matter jurisdiction based upon federal preemption, and for Mrs. Smith's failure to provide sufficient evidence of damages to support a prima facie case of breach of contract. Mrs. Smith appeals.

³Bechtel employed Mr. Finch in a different department than Mr. Smith. Mr. Finch testified that Bechtel allowed his department to pick the union of their choice after meeting with several different union representatives.

Mrs. Smith failed to provide this court with documentation regarding the employment benefits Mr. Smith received from either EG & G or Bechtel.

DISCUSSION

This court reviews a district court's grant of a NRCP 41(b) motion to dismiss by accepting all of the plaintiff's evidence as true, drawing all inferences in plaintiff's favor, and will not reweigh the evidence.⁴ Additionally, ““the plaintiff must present a prima facie case upon which the triers of fact can grant relief.””⁵

We affirm the district court's order granting Bechtel's motion for dismissal on the basis that Mrs. Smith failed to demonstrate damages. However, we reject the district court's conclusion that it lacked subject matter jurisdiction.

The United States Supreme Court in Caterpillar Inc. v. Williams, held that “Section 301 [of the Federal Labor Management Relations Act] says nothing about the content or validity of individual employment contracts” and a plaintiff, as master of the complaint, possesses the right to choose whether or not to sue under Section 301.⁶ “Claims bearing no relationship to a collective-bargaining agreement beyond the fact that they are asserted by an individual covered by such an agreement are simply not pre-empted by [Section] 301.”⁷

⁴Barelli v. Barelli, 113 Nev. 873, 879-80, 944 P.2d 246, 249-50 (1997).

⁵Id. at 880, 944 P.2d at 250 (quoting Griffin v. Rockwell International, Inc., 96 Nev. 910, 911, 620 P.2d 862, 863 (1980) (quoting Bates v. Cottonwood Cove Corp., 84 Nev. 388, 391, 441 P.2d 622, 624 (1968))).

⁶482 U.S. 386, 394-95, 398-99 (1987).

⁷Id. at 396 n.10.

Bechtel stresses that Mr. Smith was covered by the collective bargaining agreement at all times following his affiliation with the union, and that the collective bargaining agreement governed all of his employment conditions and benefits thereafter. Bechtel therefore reasons that any claim for benefits, beyond those provided under the agreement, implicates federal law and the preemption provisions of the LMRA. We disagree. Mrs. Smith's cause of action concerned alleged representations by Bechtel as to Mr. Smith's individual employment contract. Her basic claims did not involve or arise from the collective bargaining agreement or Bechtel's contract with Local 12. In fact, these claims require no interpretation of the collective bargaining agreement.⁸ Therefore, we conclude that the state law claims were not preempted by federal law and were properly before the state district court.

While the state district court erred in determining it did not have subject matter jurisdiction to hear Mrs. Smith's case, we conclude that the district court correctly determined that Mrs. Smith failed to present prima facie evidence of damages in support of her breach of contract claim. Also, her briefs on appeal do not demonstrate any error in the district court's determination on this issue. Therefore, the district court properly awarded Bechtel's motion for dismissal.⁹


⁸To the extent the claims legally relate to entitlement of benefits under the collective bargaining agreement, or required interpretation of the collective bargaining agreement, they were properly dismissed under a federal preemption theory as found by the district court.

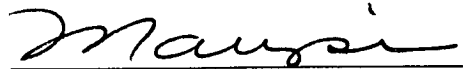
⁹We have considered Mrs. Smith's remaining assignments of error on appeal and find them without merit.

CONCLUSION

We conclude that the district court did not err in granting Bechtel's NRCP 41(b) motion for dismissal because Mrs. Smith did not present a prima facie case of damages. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Rose


_____, J.
Maupin

cc: Eighth Judicial District Court Department 12, District Judge
Sandra J. Smith
Fisher & Phillips LLP
Clark County Clerk

¹⁰This matter was submitted for decision by a panel of this court comprised of Justices Rose, Leavitt, and Maupin. Justice Leavitt having died in office on January 9, 2004, this matter was decided by a two-justice panel.