IN THE SUPREME COURT OF THE STATE OF NEVADA

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| LISA ELAINE MALBASA,<br>Appellant,<br>vs.<br>DESERT PALACE, INC., A NEVADA CORPORATION, D/B/A CAESAR'S PALACE,<br>Respondent. | No. 39711<br>**FILED**<br>DEC 08 2003<br>JANET E. M. BLOOM<br>CLERK OF SUPREME COURT<br>BY [signature]<br>CHIEF DEPUTY CLERK |

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from an order granting summary judgment on behalf of Desert Palace, Inc. d/b/a Caesar's Palace in a negligent security action.

This case arises out of two incidents when Appellant Lisa Elaine Malbasa was abducted from the Caesar's Palace employee parking garage by her estranged husband, Douglas Kearns, who then physically and sexually assaulted her. Both were employed by Caesar's Palace; Malbasa as a cocktail waitress and Kearns as a roulette dealer. Malbasa and Kearns were separated at the time of the incidents, but were still employed at Caesar's.

The first incident occurred on April 20, 1998, when Malbasa arrived at work shortly before her shift. Malbasa testified in her deposition that police detectives went to Caesar's Palace after the incident to verify Malbasa's employment. She also asserted that she obtained a temporary restraining order against Kearns, which was supplied to Caesar's Palace. The record does not contain any documents supporting these assertions, and they are inadmissible hearsay. However, the record does reflect that Caesar's Palace security had some notice of the incident



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and brought it to the attention of the Human Resources Department because a Caesar's Palace memorandum in the record reflects that Kearns was placed on investigative leave as a result of the incident.

Upon her return to work, Malbasa testified that she asked her manager if she could park in the valet section. Malbasa alleges that her request was passed up the chain of command and the manager subsequently told her that she could not valet park.

The second incident occurred on May 30, 1998. Malbasa clocked out following her shift and proceeded to the employee parking area. Malbasa had just gotten into her car when Kearns appeared at the driver's side door, pointing a .357 handgun at her and kidnapped her.

Malbasa filed a complaint against Caesar's Palace, asserting negligence based on the April 20 and May 30 abductions. After Caesar's Palace answered that the provisions of the Nevada Industrial Insurance Act (NIIA)[1] barred Malbasa's claim, Malbasa filed an amended complaint alleging causes of action for premises liability, negligent supervision, negligent training, and intentional infliction of emotional distress. Malbassa did not assert a simple negligence action based upon Caesar's Palace's alleged failure to permit her to use valet parking or otherwise act reasonably in preventing Kearns from gaining access to the property. However, the complaint does contain factual allegations relating to these issues.

In Malbasa's answers to interrogatories, she asserted that Caesar's Palace breached its duty to provide a safe work environment by:

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[1]NRS 616A.005-616A.495.

(1) failing to have a security guard present in the employee parking garage, (2) failing to brief the security guards regarding the April 20 abduction, particularly since a copy of the TRO was provided to Caesar's management, (3) failing to have operable video surveillance cameras in the employee parking garage. No specific mention of the valet parking issue was made.

Shortly before trial and after the close of discovery, Caesar's Palace filed a motion for summary judgment, claiming Malbasa's four enumerated causes of action were either barred by the exclusive remedy provisions of the NIIA or were unsupported by admissible evidence. Malbasa responded, denying that the exclusivity provisions applied, particularly regarding Caesar's alleged failure to provide adequate security to Malbasa after being notified of the first incident. Malbasa conceded that she did not have evidence to support her intentional infliction of emotional distress claim and abandoned that cause of action.

The district court found that: (1) Malbasa's injury arose out of and in the course of her employment, (2) Caesar's Palace required Malbasa to park in the employee parking area where she was abducted, and (3) Malbasa's employment increased and/or contributed to her risk of assault and injury. The district court then granted the motion for summary judgment, finding that the claims arose out of her scope of employment and were barred by the exclusive remedy provision.

This court's review of an order granting summary judgment is de novo.[2] Summary judgment is appropriate when the pleadings,

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[2]Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

depositions, answers to interrogatories, admissions, and affidavits on file show that no genuine issue exists as to any material fact and that the moving party is entitled to judgment as a matter of law.[3] "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party."[4]

On appeal, Malbasa argues that her claims are not covered by the NIIA and, therefore, the NIAA's exclusive remedy provision does not prohibit her from suing Caesar's Palace for negligence. A claim is governed by the NIIA when the injury was sustained in the course of employment and arose out of the employment.[5] The NIIA "provides the exclusive remedy of an employee against his employer for workplace injuries."[6]

However, in some instances, the exclusive recovery provisions do not bar recovery for an employer's negligence involving intentional torts committed by third parties.[7] "Assaults that are the outgrowth of the frictions of employment are compensable [under workers' compensation

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[3]NRCP 56; see also Great American Ins. v. General Builders, 113 Nev. 346, 350-351, 934 P.2d 257, 260 (1997).

[4]Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

[5]NRS 616A.020(1).

[6]Lipps v. Southern Nevada Paving, 116 Nev. 497, 499, 998 P.2d 1183, 1184 (2000); see also NRS 616A.020(1); NRS 616B.612(1).

[7]Comment, Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?, 31 Tex. Tech. L. Rev. 139, 146 (2000).

laws], and an assault arises out of employment if it arises out of the nature, conditions, obligations, and incidents of employment or if the risk is increased because of the nature of the work, or if the reason for the assault is a quarrel having its origin in the work."[8] Conversely, "an assault motivated by a purely personal ground is not compensable."[9] In McColl v. Scherer, this court stated,

> "[W]here an employee is assaulted and injury is inflicted upon him through animosity and ill will arising from some cause wholly disconnected with the employer's business or the employment, the employee cannot recover compensation simply because he is assaulted when he is in the discharge of his duties. Under such circumstances the injury does not arise out of the course of employment, and the employment is not the cause of the injury although it may be the occasion of the willful act, and may furnish the opportunity for its execution."[10]

Thus, an employer may be sued if the employer's negligence contributed to the third party's ability to inflict injuries upon the employee and the injuries arose out of personal animosity.

Viewing the evidence in the light most favorable to Malbasa, the district court did not err in granting summary judgment on her enumerated claims. Both abductions occurred while she was either on the

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[8]82 Am. Jur. 2d Workers' Compensation § 343 (2003) (internal citations omitted).

[9]Id.; see also McColl v. Scherer, 73 Nev. 226, 230, 315 P.2d 807, 809 (1957).

[10]McColl, 73 Nev. at 230, 315 P.2d at 809.

employer's property prior to or immediately following her regularly scheduled shift. Therefore, the exclusive remedy provision would apply unless Malbasa establishes the assault was the result of personal animosity and the negligence was unrelated to a condition of employment.

Malbasa produced admissible evidence demonstrating that the causal link between the protagonists was the personal animosity deriving from the Kearns' and Malbasa's failed marital relationship, not the employment relationship. However, her enumerated causes of action are based upon a general duty to protect employees, not a specific duty owed to her regardless of her employment status. The enumerated claims allege that the parking area was generally unsafe and that the security staff was negligently trained or supervised. These claims relate to Caesar's Palace's duty to provide a safe environment for all employees and that the general work conditions increased her risk of harm. Consequently, her injuries arose from her employment, and the exclusive remedy provision of the NIIA precludes her suit.

However, the complaint also alleges a non-enumerated claim that Caesar's Palace was placed on notice of the first attack, had a duty to take action to prevent future attacks and breached that duty by failing to act reasonably in permitting her to valet park or take other steps designed to prevent Kearns' access to the property. If true, then that claim has nothing to do with Malbasa's conditions of employment and is not precluded under the NIIA.

Nevada is a notice-pleading state.[11] As a result,

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[11]Langevin v. York, 111 Nev. 1481, 1483, 907 P.2d 981, 982 (1995).

> [O]ur courts liberally construe pleadings to "place into issue matters which are fairly noticed to the adverse party." A complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought.[12]

Moreover, Caesar's Palace was aware that this theory of negligence was a part of Malbasa's case. The record reflects that Malbasa was questioned about what type of notice was provided to Caesar's Palace after the first attack and how her request to park in valet was denied. This theory was also asserted during the summary judgment hearing. While Caesar's Palace denies it was given notice or, if it was given notice, that it had a duty to act or acted unreasonably, these are genuine issues of material fact that preclude summary judgment as to the second incident.[13] Therefore, the district court erred in granting summary judgment on this claim. Accordingly, we

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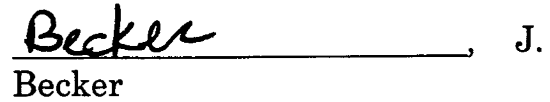
[12]Western States Constr. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (internal citations omitted); see also Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

[13]As to the first incident, Malbasa does not allege Caesar's Palace had any reason to foresee that Kearns would attack her, therefore summary judgment was proper on this claim.

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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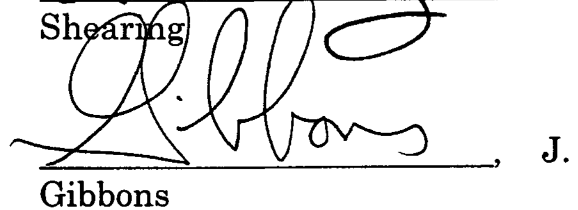

, J.

Gibbons

cc: Hon. Valorie Vega, District Judge
Richard Segerblom
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk