

IN THE SUPREME COURT OF THE STATE OF NEVADA

FARMERS INSURANCE EXCHANGE;
FARMERS INSURANCE COMPANY,
INC.; AND SUSAN BITHELL,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LEE
A. GATES, DISTRICT JUDGE,
Respondents,

and

RANDY MCLEOD; JIM BURNHAMS;
JILL GERMAINE VALONE; DANIEL D.
LUCAS; DENISE NEWMAN; ARNIE
HALVERSON; AND ANTHONY ROSS,
Real Parties in Interest.

No. 40905

FILED

APR 07 2004

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

ORDER GRANTING PETITION FOR WRIT OF
MANDAMUS IN PART AND DENYING IN PART

This is an original petition for a writ of mandamus challenging a district court order denying petitioners' motion for summary judgment. The underlying action involves a class action lawsuit by current and former employees against Farmers Insurance Exchange, Farmers Insurance Company, Inc., and Susan Bithell (collectively "Farmers"), alleging that Farmers has required them to work overtime without overtime pay. The class members assert that they are entitled to overtime pay under NRS 608.018 or straight-time pay under their alleged employment contract. Farmers moved for summary judgment as to both claims, which the district court denied. As noted, Farmers now petitions in mandamus challenging the district court's order. We grant the petition in part.

“A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station, or to remedy a manifest abuse of discretion.”¹ Although we generally will not entertain a writ petition challenging the district court’s denial of a motion for summary judgment, we may do so “when no factual disputes exist and the district court is obligated to dismiss an action pursuant to clear authority under a statute or rule.”²

Statutory claim

Farmers alleges that the district court should have granted summary judgment on the class’ statutory overtime claims under NRS 608.018(2)(b).

“When a statute is not ambiguous, . . . we are not empowered to construe the statute beyond its plain meaning, unless the law as stated would yield an absurd result.”³ NRS 608.018(2)(a) and NRS 608.018(2)(b) exempt from overtime wages “[e]mployees who are not covered by the minimum wage provisions of NRS 608.250” and “[e]mployees who receive compensation for employment at a rate not less than one and one-half times the minimum rate prescribed pursuant to NRS 608.250.” While the class members make much of the fact that NRS 608.018(2)(b) uses the term “minimum rate” rather than “minimum wage,” as used in NRS 608.018(2)(a), we conclude that these terms are synonymous. NRS

¹Dayside Inc. v. Dist. Ct., 119 Nev. ___, ___, 75 P.3d 384, 386 (2003) (footnotes omitted); NRS 34.160.

²Advanced Countertop Design v. Dist. Ct., 115 Nev. 268, 269, 984 P.2d 756, 758 (1999).

³California Commercial v. Amedeo Vegas I, 119 Nev. ___, ___, 67 P.3d 328, 330 (2003).

608.250(1) requires the labor commissioner to establish a minimum wage. "Minimum rate" refers to the minimum wage established by the labor commissioner. We conclude that the statutory language is not ambiguous and that it clearly exempts from overtime pay requirements those employees earning more than one and one-half times the minimum wage. Because all of the class members earn more than one and one-half times the minimum wage, the class members have no cause of action under NRS 608.018. Accordingly, the district court erred by denying Farmers' motion for summary judgment on the statutory claims.

Breach of contract claim

Farmers asserts that the district court erred by denying its motion for summary judgment regarding the class' breach of contract claim because, Farmers alleges, no employment contract was formed between Farmers and the class member employees as a matter of law. The class seeks straight-time pay for hours worked in excess of 38 3/4 hours per week, based on a contract allegedly formed by the employee handbook. Farmers contends that the express disclaimer contained within the handbook, and the acknowledgment forms signed by Farmers' employees when they received the handbook, clearly show that no employment contract was formed between Farmers and its employees.⁴ Farmers therefore asserts that the district court erred by failing to resolve whether the handbook creates a contract as a matter of law because the

⁴Southwest Gas v. Vargas, 111 Nev. 1064, 1071, 901 P.2d 693, 697 (1995) (stating that "the employer can easily prevent [the inference that a handbook is part of the employment contract] from arising by including in its handbook an express disclaimer of implied contractual liability") (quoting D'Angelo v. Gardner, 107 Nev. 704, 708 n.4, 819 P.2d 206, 209 n.4 (1991)).

handbook and disclaimer together establish beyond all doubt that an enforceable promise does not exist.⁵

The employee handbook included a disclaimer that the handbook did not create a contract, supporting a conclusion that no employment contract existed.⁶ However, this presumption may be overcome by the employer's conduct, if it can be inferred from such conduct that the handbook defined the parties' employment relationship and the parties considered themselves bound by it.⁷ At the time of the summary judgment hearing, the parties had engaged in limited discovery, and discoverable information relevant to the class members' ability to prove their claim had not been fully disclosed. We conclude that the question of whether the employee handbook disclaimed the creation of an enforceable employment contract as a matter of law is not now ripe for the imposition of summary judgment. Therefore, our intervention in connection with the breach of contract claim is not warranted at this time.⁸

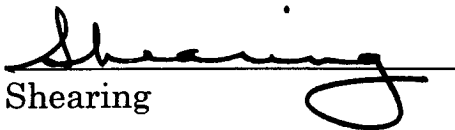
⁵See Alam v. Reno Hilton Corp., 819 F. Supp. 905, 909-10 (D. Nev. 1993) (granting the defendants' summary judgment motions because, among other reasons, no employment contract was created where the attendant circumstances and express disclaimer prevented the employee handbook from being construed as an employment contract).

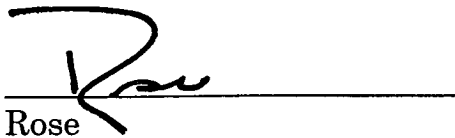
⁶See D'Angelo, 107 Nev. at 708 n.4, 819 P.2d at 209 n.4.

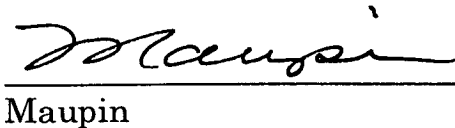
⁷Id. at 709, 819 P.2d at 210.

⁸Whether this claim is subject to dismissal because of the disclaimer must await further discovery.

Accordingly, we ORDER the petition GRANTED IN PART AND DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant Farmers' motion for summary judgment with respect to the class members' statutory claim.

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. Lee A. Gates, District Judge
Lewis & Roca
Winston & Strawn
Harrison Kemp & Jones, LLP
Clark County Clerk