

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND BUXSEL,
Appellant/Cross-Respondent,
vs.
CHRIS MCMASTER,
Respondent,
and
MANDALAY CORPORATION, D/B/A
MANDALAY BAY RESORT AND
CASINO,
Respondent/Cross-Appellant.

No. 41158

FILED

DEC 22 2004

J. Swails
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a personal injury action and a cross-appeal from an order denying NRCP 11 sanctions. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Appellant Raymond Buxsel, a card dealer at Mandalay Bay Resort and Casino,¹ was injured when respondent Christopher McMaster, a Mandalay Bay security guard, pushed Buxsel from behind while responding to an emergency. Buxsel filed a workers' compensation claim. While maintaining the workers' compensation claim, Buxsel filed an intentional tort action for battery against McMaster and for respondeat superior against Mandalay Bay. The district court subsequently granted summary judgment in Mandalay Bay's favor, concluding that Mandalay

¹Mandalay Bay Resort and Casino is owned and operated by respondent/cross appellant, Mandalay Corporation, d/b/a Mandalay Bay Resort and Casino.

Bay was immune from common law liability under the Nevada Industrial Insurance Act (NIIA).² We affirm.

We first address Buxsel's argument that his workers' compensation claim does not preclude him from simultaneously maintaining an intentional tort action in the district court. Generally, the NIIA provides exclusive remedy to an employee whose injuries arise out of employment. However, this court has held that an employee is not foreclosed from litigating a common law intentional tort action against an employer even while receiving workers' compensation benefits, if the employee has not received a final disposition of the workers' compensation claim. In McGinnis v. Consolidated Casinos Corp.,³ this court held that when a covered employee accepts a final disposition of his or her workers'

²NRS 616A.020 states in pertinent part:

NRS 616A.020 Rights and remedies exclusive; terms and conditions for payment of compensation conclusive, compulsory and obligatory; application of exclusive remedies to certain employers.

1. The rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive, except as otherwise provided in those chapters, of all other rights and remedies of the employee, his personal or legal representatives, dependents or next of kin, at common law or otherwise, on account of such injury.

³98 Nev. 396, 650 P.2d 806 (1982).

compensation claim, that acceptance serves as an accord and satisfaction of all common law rights, destroying the employee's common law right of action against the employer for an intentional tort.⁴ Further, in Las Vegas-Tonopah-Reno Stage Line, Inc. v. Nevada Industrial Commission,⁵ we concluded that once it is finally determined by the claims administrator or by a court that a covered employee has sustained a personal injury arising out of and in the course of his employment, compensation therefore is limited to that provided by the NIIA.

In this case, at the time that the district court granted summary judgment, Buxsel had not accepted a final disposition of his workers' compensation claim. In addition, it appears that no final claims administrator or court determination had been made regarding the employment-related nature of his injuries. Accordingly, we conclude that Buxsel's workers' compensation claims did not bar him from simultaneously pursuing a claim of battery against Mandalay Bay.

This court's review of an order granting summary judgment is de novo. Summary judgment is appropriate where the pleadings, depositions, answers and interrogatories show that no genuine issues of material fact exist and that the moving party is entitled to judgment as a

⁴Advanced Countertop Design, v. Dist. Ct., 115 Nev. 268, 984 P.2d 756 (1999) (citing Arteaga v. Ibarra, 109 Nev. 772, 776, 858 P.2d 387, 390 (1993); Stevenson v. Kollsman Mineral & Chem., 91 Nev. 529, 539 P.2d 463 (1975); First Nat'l Bk. v. Dist. Ct., 75 Nev. 77, 82, 335 P.2d 79, 82 (1959)).

⁵81 Nev. 626, 408 P.2d 241 (1965).

matter of law.⁶ We conclude that the district court properly granted summary judgment of Buxsel's claim for respondeat superior against Mandalay Bay, as there exist no genuine issues of material fact regarding the underlying battery claim.⁷ Buxsel's claim was based primarily on the alleged existence of a videotape demonstrating the battery. However, this court's de novo review indicates that the in-camera affidavit submitted by Mandalay Bay⁸ inferred that no such tape was in existence for district court to review. Additionally, Buxsel's deposition reveals he lacks evidence to substantiate his allegation of tortuous conduct and that his signed documents are mere conjectures as to the incident. Accordingly, we conclude that there is no genuine issue of material fact, and that therefore, the district court did not err in granting summary judgment.

Finally, Mandalay Bay requests that we reverse the district court's order denying NRCP 11 sanctions in regard to Buxsel's signed documents.⁹ This court will not reverse a district court's order as to

⁶Vernef v. City of Boulder City, 119 Nev. 549, 80 P.3d 445 (2003).

⁷Molino v. Asher, 96 Nev. 814, 618 P.2d 878 (1980) (recognizing that an employer may be held responsible for an employee's actions when the employee is acting under the employer's control and within the course of employment).

⁸Mandalay Bay submitted an in-camera affidavit regarding the operation of its video cameras (the movement and speed) in the casino.

⁹NRCP 11 states in part:

Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. . . . The

continued on next page . . .


sanctions absent a showing of an abuse of discretion. In Nevada, a district court judge has discretion to order sanctions imposed on a party for filing frivolous claims, when such claims are baseless and made without reasonable inquiry. Here, the craftily composed opening statements by Buxsel's attorney bordered on brazen misrepresentations. We note that Buxsel nearly crossed the fine line between misleading the district court and utilizing an attorney's creativity in pursuit of factual or legal theories. Sanctions pursuant to NRCPC 11 are not intended to chill an attorney's enthusiasm or creativity enlisted in reasonable pursuit of factual or legal theories. Further, a court should avoid employing the wisdom of hindsight

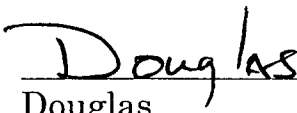
. . . continued

signature of an attorney or party constitutes a certificate by that attorney or party that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief, formed after reasonable inquiry under the circumstances . . . and that it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee.

in analyzing an attorney's actions at the time of the pleading.¹⁰ After careful and extensive review of the record, we conclude the district court did not abuse its discretion in denying sanctions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Douglas

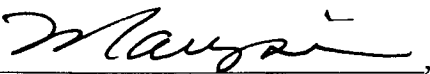
cc: Hon. Nancy M. Saitta, District Judge
Law Offices of James J. Ream
Chris McMaster
Schreck Brignone/Las Vegas
Clark County Clerk

¹⁰Marshall v. District Court, 108 Nev. 459, 465-66, 836 P.2d 47, 52 (1992) (citing Marco Holding Co. v. Lear Siegler, Inc., 606 F. Supp. 204, 211 (N.D. Ill. 1985)).

MAUPIN, J., concurring in part and dissenting in part:

In my view, respondents are immune from appellant's common law action under the Nevada Industrial Insurance Act. First, there is no evidence that McMaster's actions were in any way intentional. Second, because McMaster and Buxsel are co-employees of the same statutory employer, Buxsel's exclusive remedy is to pursue workers' compensation benefits. Third, Buxsel has elected his exclusive remedy by claiming such benefits. In this, I believe that McGinnis v. Consolidated Casinos Corp.,¹ was wrongly decided. Thus I would affirm the entry of summary judgment without reaching issues of vicarious liability.

With regard to the cross-appeal, I would reverse. Buxsel and/or his counsel should be sanctioned under NRCP 11 for intentional misrepresentations made to this court in prior proceedings.

 J.
Maupin

¹98 Nev. 396, 650 P.2d 806 (1982).