

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARLA SCHURIN, INDIVIDUALLY
AND AS REPRESENTATIVE OF THE
CLASS OF PRESENT AND FORMER
EMPLOYEES OF THE DIVISION OF
CHILD AND FAMILY SERVICES,
DEPARTMENT OF HUMAN
RESOURCES, STATE OF NEVADA;
DOROTHY REED; PAMELA
MCFARLAND; SHARON HIDVEGHY;
RAYMOND BISHOP; LINDA ADAMS;
SYLVIA SPEED; GERALD P.
ROBINSON; GWENDOLYN SMITH;
JOHN KRACHEY; STACY S. ESPLIN;
INGRID SANCHEZ; AND MICHAEL
STATH, INDIVIDUALLY AND AS
MEMBERS OF THE CLASS OF
PRESENT AND FORMER EMPLOYEES
OF THE DIVISION OF CHILD AND
FAMILY SERVICES, DEPARTMENT
OF HUMAN RESOURCES, STATE OF
NEVADA
Appellants,
vs.
DIVISION OF CHILD AND FAMILY
SERVICES, DEPARTMENT OF
HUMAN RESOURCES, STATE OF
NEVADA,
Respondent.

No. 41335

FILED

OCT 05 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss filed on behalf of respondent, Nevada's Division of Child and Family Services (DCFS). Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellants filed a complaint in district court, asserting an independent cause of action against DCFS and claiming that neither the Nevada Industrial Insurance Act (NIIA) nor the Nevada Occupational Disease Act (NODA) provided an exclusive remedy in their case. The district court granted DCFS' NRCP 12(b)(5) motion to dismiss.

We will not affirm a district court's dismissal of a complaint for failure to state a claim, unless it appears beyond a doubt that the plaintiff could prove no set of facts that could elicit favorable relief.¹

Appellants contend the district court erred in barring their independent cause of action. We conclude that our holding in Conway v. Circus Circus Casinos, Inc.² is directly on point. In Conway, casino employees were exposed to noxious fumes, which resulted in dizziness, headaches, and nausea from the exposure.³ We held that the NIIA is the exclusive remedy for an injury that arises during employment.⁴ We reasoned that exposure to noxious fumes in the workplace constituted an accident because it satisfied the unexpected and unforeseen event requirement, the suddenly and violently requirement, and the requirement that it produce objective symptoms of injury within a reasonable time.⁵

¹Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 873, 8 P.3d 837, 839 (2000).

²Id.

³Id. at 872, 8 P.3d at 838.

⁴Id. at 874, 8 P.3d at 839; see also NRS 616A.020(1).

⁵Id. at 874, 8 P.3d at 839-40.

Many of the occupants of the DCFS buildings suffered from symptoms such as mucous membrane and upper respiratory irritation and inflammation, headaches, fatigue, rashes and other symptoms. Consequently, appellants suffered injury from exposure to the mold and mildew in the workplace within the meaning of NRS 616A.265(1). Appellants' injuries are similar to injuries sustained from exposure to noxious fumes. Thus, appellants' exposure to mildew and mold qualifies as an accident under NRS 616A.030.⁶ Therefore, the NIIA serves as appellants' exclusive remedy, and their independent cause of action is barred.

Appellants assert that DCFS' conduct qualifies as an intentional tort because it intentionally concealed appellants' exposure to the toxic mold and mildew, and intentionally subjected them to this contamination. We dismissed a similar claim in Conway.⁷ Similarly, here, this claim is without merit. Appellants have not provided any facts that demonstrated that DCFS intended to injure appellants. Therefore, the appellants' claim that DCFS engaged in an intentional tort fails, and the NIIA remains appellants' exclusive remedy.

Appellants also assert that they have an independent cause of action because the NODA is not their exclusive remedy. NRS 617.440(1) outlines several elements that must all be satisfied in order to receive coverage under the NODA. These elements have not been satisfied in this instance.


⁶Id. at 874, 8 P.3d at 840.

⁷Id. at 875, 8 P.3d at 840.


Appellants correctly contend, “[c]hronic exposure to toxic mold is not a ‘natural incident of the work’” at DCFS. The function of the NODA is to provide protection for people whose diseases are directly related to their particular jobs based on the proximity, character, and conditions of the work.⁸ Exposure to toxic mold and mildew is not closely related to the business conducted at DCFS. Therefore, appellants’ cause of action is not covered under the NODA. The district court did not err in dismissing this claim because appellants have no legal cause of action outside of the NIAA.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Robert A. Groesbeck
McCrea Martin Allison, Ltd.
Robert G. Lucherini, Chtd.
Attorney General Brian Sandoval/Las Vegas
Clark County Clerk

⁸Palmer v. Del Webb’s High Sierra, 108 Nev. 673, 676, 838 P.2d 435, 436-37 (1992); NRS 617.440(1)(a).