

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE SCOTT,  
Appellant,  
vs.  
UNIVERSAL PARKING RESOURCES,  
INC.; TREVA WALKER,  
INDIVIDUALLY; CLARK COUNTY,  
NEVADA, EX REL. MCCARRAN  
INTERNATIONAL AIRPORT; AND  
DELWIN DONALDSON, IN HIS  
INDIVIDUAL CAPACITY,  
Respondents.

No. 42955

**FILED**

DEC 20 2005

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

ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING

This is an appeal from an order granting summary judgment in an employment matter. Eighth Judicial District Court, Clark County; Ronald D. Parraguirre, Judge.

Appellant, George Scott, sued Universal Parking Resources, Inc. (UPR); its chief executive officer, Treva Walker; Clark County, Nevada, ex. rel. McCarran International Airport; and Scott's former supervisor Delwin Donaldson. Scott alleged claims for breach of contract regarding both his discharge and UPR's failure to pay hours worked and overtime, and a claim for failure to deal in good faith against UPR; a claim for retaliation against UPR, Walker, and Donaldson; and claims for negligent infliction of emotional distress (NIED), intentional infliction of

emotional distress (IIED), and property damage against all of the defendants. No factual issues are in dispute.<sup>1</sup>

Defendants filed a motion for summary judgment arguing that the National Labor Relations Act (NLRA), which grants exclusive jurisdiction to the National Labor Relations Board (NLRB), preempted Scott's claims. The district court agreed and granted the motion for summary judgment after finding that Scott had engaged in activities protected under the NLRA. Scott appeals and contends that the district court erred in determining that his claims are preempted by the NLRA.

Our review of a district court's order granting summary judgment is de novo.<sup>2</sup> This court must construe the pleadings and proof in the light most favorable to the non-moving party; however, that party must not build its case ""on the gossamer threads of whimsy, speculation, and conjecture.""<sup>3</sup>

Regarding Scott's breach of contract claim for failure to pay hours worked and overtime, UPR was previously ordered to pay back overtime wages to its current employees. However, UPR did not pay Scott his back wages from 1997 to his termination in January 2000. We conclude that because UPR had previously been ordered to pay, this issue

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<sup>1</sup>Respondent UPR declined to present a statement of the facts in its reply brief, noting that it was not required to provide a statement of the facts under the Nevada Rules of Appellate Procedure.

<sup>2</sup>Tore Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

<sup>3</sup>Wood v. Safeway, Inc., 121 Nev. \_\_\_, \_\_\_, 121 P.3d 1026, 1030 (2005) (quoting Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002) (quoting Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983))).

has already been processed and, therefore, is not subject to the NLRA and NLRB. There are sufficient facts to demonstrate a material dispute regarding Scott's breach of contract claim on this issue and the district court erred by granting summary judgment. We reverse the district court's order with respect to this issue and remand the matter to the district court.

Regarding Scott's claims for breach of contract pertaining to discharge, failure to deal in good faith, and retaliation, under the NLRA, the NLRB has primary and exclusive jurisdiction over claims involving protected activities.<sup>4</sup> Under 29 U.S.C. § 157, union organizing activities are considered to fall within the purview of activities protected under the NLRA.<sup>5</sup> The facts demonstrate that Scott was fired for engaging in a protected activity, *i.e.*, for attempting to organize a union. Scott stated in his complaint that he was wrongfully terminated for his participation in union activities and stated in his deposition that the reason he was fired was because he was "trying to bring the union in. That's what got me terminated." As a result, we conclude that Scott's claims for failure to deal in good faith and retaliation are preempted under the provisions of the NLRA because they are based upon actions that are expressly protected under the provisions of the NLRA.<sup>6</sup>

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<sup>4</sup>San Diego Unions v. Garmon, 359 U.S. 236, 244-45 (1959).

<sup>5</sup>Id. at 244.

<sup>6</sup>We also find meritless Scott's contention that the district court had jurisdiction over his claims because the NLRB declined to exercise jurisdiction. While the NLRB informed Scott that his claims were time-barred, it did not inform Scott that it would not exercise jurisdiction over

*continued on next page . . .*

In addition, we conclude that Scott's NIED and IIED claims are also preempted because Scott based those claims upon the facts surrounding the retaliation and discrimination that he suffered and the defendants' refusal to address his continuing complaints concerning payment and scheduling. As a result, Scott's NIED and IIED claims cannot be addressed without addressing the merits of his retaliation and discrimination claims, which are preempted under the NLRA. Thus, the district court properly granted summary judgment on those claims.

Finally, we conclude that Scott's claim for property damage arises from a totally different set of facts, thereby giving the district court jurisdiction over the claim. However, Scott failed to present any evidence to demonstrate a factual dispute regarding whether UPR damaged his property. In fact, Scott readily admitted that he had no idea who was responsible for the damage caused to his tires and that he did not know who made the phone calls threatening him and his family. Moreover, it is unclear how these threats resulted in damage to his property. As a result, we conclude that the district court properly granted summary judgment on this issue.

Therefore, we ORDER the judgment of the district court

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*... continued*

the matter. There is nothing to indicate that had Scott timely filed his claims with the NLRB, it would have declined to exercise jurisdiction.

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

Becker, C.J.  
Becker

Douglas, J.  
Douglas

Rose, J.  
Rose

cc: Eighth Judicial District Court Dept. 3, District Judge  
Kirk-Hughes & Associates  
Littler Mendelson/Las Vegas  
Clark County Clerk