IN THE SUPREME COURT OF THE STATE OF NEVADA

SWEEPING SERVICES OF TEXAS, LP D/B/A MR. DIRT OF NEVADA; BEST WATER TRUCK SERVICE; ANDREW ATKINSON; PORTABLE RESTROOM OF TEXAS-OPERATING, LP, SST GP, LLC; AND WASTE PARTNERS OF TEXAS,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE DOUGLAS E. SMITH, DISTRICT JUDGE,
Respondents,
and
AMBER RENEE ESTRADA,
Real Party in Interest.

No. 57124

FILED

MAR 2 1 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges a district court order denying a motion to dismiss a tort action.

In March 2010, real party in interest Amber Renee Estrada filed a complaint in district court against petitioners, asserting causes of action for (1) negligence; (2) negligent hiring, selection, training, and supervision; and (3) negligent "and/or" intentional infliction of emotional distress. Stated broadly, the general allegation in the complaint was that Estrada was injured by petitioners when her supervisor, who petitioners knew was harassing Estrada and creating a hostile work environment, urinated and placed fecal matter in Estrada's drinking cups, which was confirmed through laboratory and DNA testing.

Petitioners brought a motion to dismiss, arguing that Nevada's workers' compensation statutes provided the exclusive remedy

here. Estrada opposed the motion and petitioners filed a reply. After holding a hearing, the district court entered an order denying the motion to dismiss, and this petition followed. Estrada has filed an answer, as directed.

A writ of prohibition is available when a district court acts without or in excess of its jurisdiction. NRS 34.320; State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002). Such petitions are an extraordinary remedy, and whether a petition for extraordinary relief will be considered is solely within our discretion. See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

In Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 874-75, 8 P.3d 837, 840 (2000), this court explained that while the exclusive remedy provided by the workers' compensation statutes does not provide immunity to employers who commit intentional torts against their employees, an employee must allege that their employer specifically and deliberately intended to injure them in order to avoid being required to seek workers' compensation benefits for an alleged injury. See also Fanders v. Riverside Resort & Casino, 126 Nev. ___, ___ n.3, 245 P.3d 1159, 1164 n.3 (2010) (noting that the workers' compensation system provides the sole remedy for claims alleging negligent conduct causing injuries that arise out of and in the course of employment). Indeed, as the Conway court noted, "'[K]nowingly permitting a hazardous work condition to exist, . . . [or] willfully failing to furnish a safe place to work . . . still falls short of the kind of actual intention to injure that robs the injury of accidental character.'" 116 Nev. at 875, 8 P.3d at 840 (quoting Austin v. Johns Manville Sales Corp., 508 F. Supp. 313, 317 (D. Maine 1981)).

Here, our review of the complaint leads us to conclude that Estrada is alleging that her employer merely acted negligently in its handling of the incidents at issue.[1] While Estrada does state in her answer that her complaint "implies that [p]etitioners had directly or tacitly encouraged [her supervisor] to harass [Estrada] in an attempt to lead her to quit her employment," Estrada fails to identify where the complaint implies this assertion and our own review of the complaint fails to reveal any language containing such an implication. Further, while Estrada's third cause of action suggests, by its title, that it is seeking relief for her employer's intentional infliction of emotional distress, the language of her cause of action in no way suggests intentional conduct on behalf of her employer. See Conway, 116 Nev. at 874, 8 P.3d at 840 (explaining that simply labeling an employer's conduct as intentional will not, without more, remove a matter from the scope of Nevada's workers' compensation statutes).

Additionally, to the extent that Estrada argues that there was no "accident," as defined by NRS 616A.030, to place this matter within the confines of the workers' compensation statutory scheme, that argument fails. NRS 616A.030 provides that an "accident" is "an unexpected or unforeseen event happening suddenly and violently . . . and producing at

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[1]We note that the alleged intentional acts addressed in Estrada's complaint were committed by her supervisor, not by her employer, and the supervisor is not a party to these proceedings. Moreover, Estrada makes no developed argument that intentional torts committed by a supervisor are directly attributable to the employer for workers' compensation exclusive remedy purposes. As a result, we do not consider this issue. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider arguments not developed or presented with relevant authority).

the time objective symptoms of an injury." In American International Vacations v. MacBride, 99 Nev. 324, 327-28, 661 P.2d 1301, 1303 (1983) (citing Smith v. Garside, 76 Nev. 377, 355 P.2d 849 (1960), we held that the term "violently," as used in NRS 616A.030, includes "any cause efficient in producing a harmful result," and the phrase "at the time, objective symptoms of injury" to cover symptoms that manifest themselves "within a reasonable time." See also Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 364, 184 P.3d 378, 385 (2008) (approving MacBride's treatment of the NRS 616A.030 "accident" definition); Conway, 116 Nev. at 875-76, 8 P.3d at 841 (same). We conclude that the actions alleged by Estrada fall under the definition of accident, as defined by these cases. We further note that, in Wood v. Safeway, Inc., 121 Nev. 724, 736, 121 P.3d 1026, 1034 (2005), we held that workers' compensation was the plaintiff's exclusive remedy against her employer for a sexual assault that occurred in the workplace. Although Wood did not address NRS 616A.030's accident requirement, we nonetheless find the reasoning of Wood persuasive as to the applicability of the workers' compensation exclusive remedy to Estrada's claims.[2]

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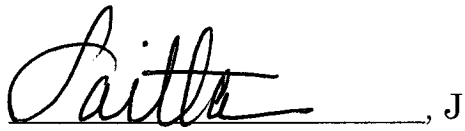
[2]We note that the law does not fail to provide Estrada a remedy for any injuries sustained as a result of her supervisor's alleged conduct. See Wood, 121 Nev. at 736 n.43, 121 P.3d at 1034 n.43 (explaining that in light of an employer's arguments that it was immune from suit under the workers' compensation statutes for a workplace sexual assault, it was thereafter estopped from arguing that the injuries from the assault were not covered under a workers' compensation claim); Fanders v. Riverside Resort & Casino, 126 Nev. ___, ___, 245 P.3d 1159, 1164 (2010) (permitting an employee to maintain an action outside of the workers' compensation statutes against a coworker who allegedly commits and intentional tort against the employee).

Accordingly, we conclude that the district court acted in excess of its jurisdiction in denying petitioners' motion to dismiss, NRS 34.320, and therefore we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF PROHIBITION barring the district court from taking any further action in the underlying case other than entering an order dismissing the action for lack of jurisdiction.



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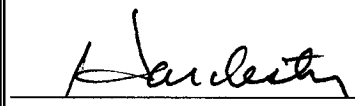

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Parraguirre

cc: Hon. Doug Smith, District Judge
Fisher & Phillips LLP
Regina A. Petty, Esq.
Gallian, Wilcox, Welker, Olson & Beckstrom, L.C.
Eighth District Court Clerk