

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMTRUST NORTH AMERICA, INC.,
Appellant,
vs.
PARK INDUSTRIES, INC.,
Respondent.

No. 83759-COA

FILED

JUN 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

AmTrust North America, Inc. appeals from a district court order dismissing its complaint in a civil action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

AmTrust, a workers' compensation insurance company, paid Abraham Martinez-Saldiviar, an injured worker, insurance benefits following an industrial accident that occurred in August 2018. On July 23, 2020, AmTrust filed suit against respondent Park Industries, Inc. (Park), the company that made the machinery that injured Martinez-Saldiviar, alleging causes of action for negligence and strict products liability. In its complaint, AmTrust alleged both that it had a statutory lien encompassing its total incurred obligations to Martinez-Saldiviar and that it had "the right to subrogation to recover said obligations" from Park. Subsequently, on July 29, 2020, Martinez-Saldiviar filed a separate personal injury complaint against Park, and the two cases were consolidated in March 2021.

Park filed its answer to AmTrust's complaint on October 29, 2020. Martinez-Saldiviar conducted two early case conferences—one in November 2020, prior to the cases being consolidated and a second

supplemental conference in June 2021, after the consolidation. With respect to the June 2021 supplemental case conference, Martinez-Saldiviar served a notice of the conference on Park, but not AmTrust. AmTrust took no independent action to conduct an early case conference at that point.

In July 2021, Park filed a motion to dismiss AmTrust's complaint, alleging that AmTrust failed to hold or attend an early case conference or file a case conference report as required by NRCP 16.1, despite the fact that Martinez-Saldiviar held two early case conferences in the companion matter. Park also argued that dismissal was warranted under NRCP 12(b)(5) because, although AmTrust had a statutory workers' compensation lien on the proceeds from Martinez-Saldiviar's case, it could not maintain a cause of action for negligence or strict products liability. AmTrust opposed the motion and subsequently filed its early case conference disclosures in August 2021.

The district court vacated the scheduled hearing on the motion to dismiss and granted the motion in a written order. Relying on *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007), the court found that AmTrust failed to hold or appear at any early case conferences in the companion matter and failed to file a case conference report in contravention of NRCP 16.1. Moreover, it concluded that AmTrust failed to provide good cause for the delay, which impeded the timely prosecution of the case. The court also noted that AmTrust waited "approximately two weeks prior to the running of the statute of limitations to file the [c]omplaint." The court additionally dismissed the complaint based on NRCP 12(b)(5) and found that, based on *American Home Assur. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 147 P.3d 1120 (2006), the existence of AmTrust's statutory lien on Martinez-Saldiviar's recovery did not give AmTrust the right to maintain a claim for

negligence or strict products liability against Park. AmTrust subsequently filed a timely motion to reconsider, which the district court denied. This appeal followed.

On appeal, AmTrust first argues that the district court erred in dismissing its complaint pursuant to NRCP 12(b)(5) because NRS 616C.215 gives a workers' compensation insurer an independent right of action to recover against an alleged tortfeasor.

We review de novo an order granting an NRCP 12(b)(5) motion to dismiss. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A district court's decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

Under NRS 616C.215(2)(b), a workers' compensation insurer "has a right of action against the person so liable to pay damages [for the employee's injury] and is subrogated to the rights of the injured employee . . . to recover therefor." *See also Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (stating that under the principle of subrogation "an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party" (internal quotations omitted) (quoting Subrogation, Black's Law Dictionary (9th ed. 2009))). Separately, NRS 616C.215(5) also provides that, in cases where the insurer is subrogated to the rights of the injured employee, the insurer "has a lien upon the total proceeds of any recovery

from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement or otherwise.”

Here, while the district court correctly noted that the existence of AmTrust’s workers’ compensation lien does not give it the right to maintain a claim for negligence against a third-party tortfeasor, *American Home Assur.*, 122 Nev. at 1240, 147 P.3d at 1127, its order ignores that NRS 616C.215(2)(b) gives AmTrust “a right of action against the person so liable to pay damages” and subrogates AmTrust to the rights of the injured employee to recover. *See American Home Assur.*, 122 Nev. at 1240, 147 P.3d at 1127 (noting that the Legislature has protected an insurer’s right to recoup its costs by “not only imposing a statutory lien on any proceeds an injured worker may obtain, but also by permitting it to bring an independent action, based on its subrogation rights, if necessary”). In other words, while the existence of the statutory lien does not give AmTrust the right to maintain a negligence action against Park, its subrogation rights do. *See* NRS 616C.215(2)(b); *American Home Assur.*, 122 Nev. at 1239, 147 P.3d at 1127 (“[U]nder Nevada law, the insurer obtains such a significant interest in the injured workers’ claims as the result of its subrogation right, that it may itself sue the alleged tortfeasor, even if the injured worker does not.”).

Thus, because AmTrust paid Martinez-Salvidiar workers’ compensation benefits, it was subrogated to Martinez-Saldiviar’s right to recover against the alleged tortfeasor, Park, and therefore had a right of action against Park pursuant to NRS 616C.215(2)(b). Accordingly, the district court erred in dismissing AmTrust’s complaint on this basis and thus, to the extent the challenged order dismissed AmTrust’s complaint pursuant to NRCP 12(b)(5), we reverse that decision. This does not end our

analysis however, because the district court also dismissed AmTrust's complaint for failure to conduct the case conference or file a report required by NRCP 16.1, and we therefore turn to address that part of the district court's decision.

With respect to the dismissal pursuant to NRCP 16.1, AmTrust asserts that the district court abused its discretion because it did not receive notice of Martinez-Saldiviar's early case conference, and therefore, could not have attended, and because AmTrust's failure to hold an early case conference and file a report did not delay the proceedings.

NRCP 16.1(b) requires a plaintiff to hold an early case conference within 30 days after service of an answer by the defendant, and this deadline may be extended no later than 180 days from when the defendant's first answer is served, unless compelling and extraordinary circumstances justify an extension. NRCP 16.1(c) requires the parties to file a report regarding the conference with the district court within 30 days after the conference. NRCP 16.1(e) provides, in relevant part, that the district court may dismiss a case without prejudice if, (1) in the absence of compelling and extraordinary circumstances, the early case conference is not held within 180 days after service of an answer by a defendant, or (2) the plaintiff fails to file a case conference report within 240 days after service of an answer by a defendant.

We review a district court's decision on a motion to dismiss due to failure to comply with NRCP 16.1(e) deadlines for an abuse of discretion. *Arnold*, 123 Nev. at 414, 168 P.3d at 1052. When deciding such motions, district courts should consider factors such as "the length of the delay, whether the defendant induced or caused the delay, whether the delay has otherwise impeded the timely prosecution of the case, general

considerations of case management . . . or whether the plaintiff has provided good cause for the delay.” *Id.* at 415-16, 168 P.3d at 1053.

Here, while the district court considered certain of the *Arnold* factors, we are not confident that the court properly exercised its discretion in light of the erroneous NRCP 12(b)(5) based dismissal discussed above and certain irrelevant and/or improper factual findings contained in its dismissal order. Specifically, in discussing how AmTrust had purportedly caused the underlying case to be delayed, the district court noted that AmTrust was not present at the early case conference Martinez-Saldiviar held in “the companion matter.” But holding this point against AmTrust was improper given that AmTrust’s case was the lead case when the cases were consolidated and AmTrust was not provided with notice of that conference, as required by EDCR 2.50(a)(2),(3) (“Documents filed subsequent to the consolidation shall list only the caption and case number of the lowest-numbered case” and “the certificate of service . . . will list all applicable case numbers and parties”).¹

Additionally, in discussing the delay factor, the district court improperly suggested that the timing of the filing of AmTrust’s complaint somehow indicated that AmTrust had delayed the underlying case, noting that the injury occurred on August 8, 2018, and “AmTrust waited until July 23, 2020 or approximately two weeks prior to the running of the two year statute of limitations to file the Complaint.” But it is undisputed that

¹Although we point out that AmTrust was entitled to notice of the early case conference conducted in the companion case, we caution the parties that they are required to comply with the Nevada Rules of Civil Procedure. See NRCP 16.1(b)(4)(A) (“Unless the parties agree or the court orders otherwise, *the plaintiff* is responsible for designating the time and place of each conference.” (emphasis added)).

AmTrust's complaint was timely filed within the applicable limitations period, and the fact that the complaint was filed towards the end of that period is not a proper consideration suggesting a delay in the proceedings under *Arnold*, 123 Nev. at 415-16, 168 P.3d at 1053. Finally, the dismissal order summarily concludes that AmTrust's delay in conducting an early case conference has impeded the timely prosecution of the case without elaborating further on how it has impacted the case. *See Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) ("Although this court reviews a district court's discretionary determinations deferentially, deference is not owed to . . . findings so conclusory that they may mask legal error." (internal citations omitted)). Taken together, these errors demonstrate that the district abused its discretion in dismissing AmTrust's complaint under NRCP 16.1.

Thus, because it is not clear that the district court would have reached the same conclusion on the NRCP 16.1 issue without the erroneous NRCP 12(b)(5) dismissal and improper factual determinations, we reverse the district court's decision and remand for further proceedings. *See, e.g., In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (remanding for further proceedings where the district court erred by applying the wrong standard of review, and it was unclear whether the court would have reached the same conclusion had it applied the correct standard). On remand, we direct the district court to fully and properly

consider the *Arnold* factors in determining whether dismissal is warranted under NRCP 16.1.² Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Hooks Meng & Clement
Ray Lego & Associates
Eighth District Court Clerk

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.