

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOSPITALITY CULINAIRE, INC.; AND  
JAMBA JUICE,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF  
CLARK; AND JACOB A. REYNOLDS,  
DISTRICT JUDGE,

Respondents,

and

DIAMOND MILLER; BRITTANY  
CHAPA; AS SPECIAL

ADMINISTRATORS ESTATE OF  
CANDACE KENT,

Real Parties in Interest.

No. 86502

**FILED**

AUG 17 2023

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

*ORDER GRANTING PETITION*

This original petition for a writ of mandamus seeks a writ directing the district court to vacate its order denying summary judgment and to grant summary judgment in petitioners' favor.<sup>1</sup>

Real parties in interest, collectively Kent, timely filed suit regarding a slip and fall, where the statute of limitations expired on November 25, 2021. On December 30, 2022, the district court entered an order on Kent and the defendants' stipulation to name real parties in interest, collectively Jamba Juice, in place of a fictitious defendant. The amended complaint was filed on January 3, 2023. Jamba Juice moved for summary judgment arguing that the statute of limitations had expired,

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this matter.

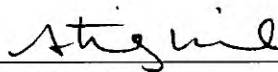
which the district court denied. Jamba Juice now seeks writ relief directing the district court to vacate its previous order and instead enter summary judgment in Jamba Juice's favor.

For Kent's naming of Jamba Juice after the statute of limitations to be considered timely, it must relate back to the timely filing of the original complaint under NRCP 10(a). *See Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 294, 255 P.3d 238, 243 (2011) (discussing how a plaintiff can amend a complaint, after the statute of limitations has expired, to substitute a fictitious defendant with a named defendant and have it relate back to the original complaint). Here, Kent did not use reasonable diligence to discover Jamba Juice's true identity. *See id.* at 292 n.2, 294, 255 P.3d 241 n.2, 243 (stating one factor for relation back is whether the plaintiff exercised reasonable diligence in discovering a fictional defendant's true identity and recognizing the issue "is a question of law, subject to de novo review"). Jamba Juice was identified as a possible responsible party in disclosures made by Clark County Department of Aviation in March 2022. Kent, however, did not pursue discovery or make any efforts to amend the complaint to add Jamba Juice until a September 2022 letter from the Department advising Kent to add Jamba Juice as a defendant. *See id.* at 295, 255 P.3d at 243 (providing factors to determine whether a plaintiff acted with reasonable diligence: "whether the [plaintiff] unreasonably delayed" seeking amendment after learning the party's identity and whether the plaintiff made efforts, such as using discovery, to learn the party's identity). And Kent does not allege that Jamba Juice "concealed its identity or otherwise obstructed [Kent's] investigation as to its identity." *Id.* (instructing courts to consider a party's obstruction in


assessing whether a plaintiff acted with reasonable diligence in amending a complaint).

Based on the foregoing, Kent's amended complaint naming Jamba Juice did not relate back to the original complaint. *See id.* at 294, 255 P.3d at 243 (providing that all factors must be met for this court to uphold relation back under NRCP 10(a)). As such, Kent named Jamba Juice after the statute of limitations expired and the district court erred in failing to grant summary judgment to Jamba Juice on this basis. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing summary judgment decisions de novo and holding that such judgment is appropriate when there is no genuine issue of material fact and "the moving party is entitled to judgment as a matter of law" (quoting NRCP 56(c))). Writ relief is appropriate in these circumstances. *See Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344-45, 950 P.2d 280, 281 (1997) (providing that this court will grant a writ petition challenging the denial of summary judgment when there is no factual dispute and the district court is obligated to grant judgment "pursuant to clear authority under a statute or rule"). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to vacate its order denying Jamba Juice's motion for summary judgment and to enter an order granting the motion.

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Jacob A. Reynolds, District Judge  
Law Offices of Eric R. Larsen  
H&P Law, PLLC  
Eighth District Court Clerk