

SUPREME COURT OF NEVADA

Humphries v. Eighth Judicial District Court of the State of Nevada ex rel. County of Clark

129 Nev. 788 (2013) · Decided November 7, 2013

SUMMARY

The Nevada Supreme Court held that an assailant was not a necessary party under NRCP 19 in a premises liability action against the casino owner. Because the court could afford complete relief between the existing parties and the casino could implead the assailant under NRCP 14 to pursue contribution, the district court erred by compelling joinder. The court granted a writ of mandamus directing the district court to vacate its joinder order.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                           |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nevada                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Parraguirre, J.; Hardesty, J.; Cherry, J.                                                                                                                                                                                                                 |
| JURISDICTION          | Nevada                                                                                                                                                                                                                                                    |
| DECIDED               | November 7, 2013                                                                                                                                                                                                                                          |
| DISPOSITION           | writ_granted                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Petition for a writ of mandamus challenging the district court's order compelling premises-liability plaintiffs to join their alleged assailant as a necessary defendant under NRCP 19(a).                                                                |
| STANDARD OF REVIEW    | The court reviews a district court's interpretation of the Nevada Rules of Civil Procedure and statutory construction de novo, even in a writ proceeding. Whether to entertain a petition for extraordinary writ relief is within the court's discretion. |
| PRECEDENTIAL VALUE    | Published Nevada Supreme Court opinion; precedential.                                                                                                                                                                                                     |
| PARTIES               | Carey Humphries, Lorenza Rocha v. Eighth Judicial District Court of the State of Nevada ex rel. County of Clark, New York-New York                                                                                                                        |

TOPICS

- joinder
- third party practice
- premises liability
- statutory interpretation
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether extraordinary writ relief was appropriate to review the district court's interlocutory order compelling joinder.
2. Whether an alleged intentional cotortfeasor is a necessary party under NRCP 19(a) when plaintiffs sue only a premises owner for negligence arising from the same injury.
3. Whether Nevada's comparative-negligence statute, NRS 41.141, requires joinder of the absent cotortfeasor to permit apportionment of fault or several liability.
4. Whether the premises owner could instead implead the alleged assailant as a third-party defendant under NRCP 14(a) and pursue contribution.

## HOLDINGS

1. Mandamus relief was appropriate because the joinder order created an immediate risk that the plaintiffs would have to assert time-barred claims or suffer dismissal, and the petition presented an important unsettled issue concerning NRCP 19(a), NRS 41.141, and Café Moda.
2. An alleged cotortfeasor is not a necessary party under NRCP 19(a) to a plaintiff's action against another tortfeasor when complete relief can be afforded among the existing parties and the absent cotortfeasor's interests will not be impaired or create inconsistent obligations.
3. NRS 41.141 does not require joinder of an absent intentional tortfeasor when the plaintiff has sued only one defendant; without the absent tortfeasor as a defendant, the statute does not require apportionment among multiple defendants or make the sole defendant severally liable.
4. A defendant may implead an absent cotortfeasor under NRCP 14(a) on an inchoate contribution claim, even though the plaintiff did not sue that person and the contribution claim has not yet accrued.

## KEY QUOTATIONS

*“Impleader thus provides an avenue to apportion fault when the plaintiff chooses not to pursue a claim against a potential tortfeasor.”* (at 798)

*“Accordingly, Ferrell is not a necessary party under NRCP 19(a), and the district court erred by compelling Humphries and Rocha to join Ferrell.”* (at 799)

## FACTUAL BACKGROUND

In April 2010, Carey Humphries and Lorenza Rocha were involved in an altercation with Erik Ferrell on the floor of New York-New York's casino. Ferrell was arrested and convicted of attempted battery with substantial bodily harm. Humphries and Rocha later sued New York-New York for negligence based on an alleged duty to protect, while New York-New York asserted comparative negligence and sought to join Ferrell as a defendant after Café Moda clarified the allocation of liability between intentional and negligent tortfeasors.

## PROCEDURAL HISTORY

Humphries and Rocha sued New York-New York for negligence arising from an altercation on the casino floor, without suing the alleged assailant, Erik Ferrell. After this court's decision in Café Moda concerning comparative fault and several liability, New York-New York moved to compel Ferrell's joinder under NRCP 19(a), and the district court granted the motion. The Supreme Court of Nevada accepted the mandamus petition, vacated the joinder order, and directed the district court to deny the motion to compel joinder.

## DISPOSITION

writ\_granted

## REMAND INSTRUCTIONS

The clerk was directed to issue a writ of mandamus instructing the district court to vacate its order compelling Ferrell's joinder and enter an order denying New York-New York's motion to compel joinder as a necessary party.

## CASES CITED

- International Game Technology, Inc. v. Second Judicial District Court, 124 Nev. 193, 179 P.3d 556 (2008)
- Smith v. Eighth Judicial District Court, 107 Nev. 674, 818 P.2d 849 (1991)
- Lund v. Eighth Judicial District Court, 127 Nev. 358, 255 P.3d 280 (2011)
- In re Simons, 247 U.S. 231 (1918)
- Café Moda, L.L.C. v. Palma, 128 Nev. 78, 272 P.3d 137 (2012)
- Warmbrodt v. Blanchard, 100 Nev. 703, 692 P.2d 1282 (1984)
- Countrywide Home Loans v. Thitchener, 124 Nev. 725, 192 P.3d 243 (2008)
- Reid v. Royal Insurance Co., 80 Nev. 137, 390 P.2d 45 (1964)
- McPherson v. Hoffman, 275 F.2d 466 (6th Cir. 1960)
- Detroit City Gas Co. v. Syme, 109 F.2d 366 (6th Cir. 1940)
- Mahan v. Hafen, 76 Nev. 220, 351 P.2d 617 (1960)
- Temple v. Synthes Corp., 498 U.S. 5 (1990)
- General Refractories Co. v. First State Insurance Co., 500 F.3d 306 (3d Cir. 2007)
- UTI Corp. v. Fireman's Fund Insurance Co., 896 F. Supp. 389 (D.N.J. 1995)
- Potts v. Vokits, 101 Nev. 90, 692 P.2d 1304 (1985)
- Angst v. Royal Maccabees Life Insurance Co., 77 F.3d 701 (3d Cir. 1996)
- Makah Indian Tribe v. Verity, 910 F.2d 555 (9th Cir. 1990)
- Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399 (3d Cir. 1993)
- Pack v. LaTourette, 128 Nev. 264, 277 P.3d 1246 (2012)
- Clark County School District v. Richardson Construction, Inc., 123 Nev. 382, 168 P.3d 87 (2007)
- Coury v. Robison, 115 Nev. 84, 976 P.2d 518 (1999)
- Berkson v. LePome, 126 Nev. 492, 245 P.3d 560 (2010)

