

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

MARIO A. SALAS, an individual,

Appellant,

vs.

CLARK COUNTY SCHOOL
DISTRICT; and VISION
TECHNOLOGIES, INC., a foreign
corporation,

Respondents.

Supreme Court No. 83105

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**RESPONDENT CLARK COUNTY SCHOOL DISTRICT'S
ANSWERING BRIEF**

Appeal
from Order Granting Motions to Dismiss
from the Eighth Judicial District Court, Clark County
The Honorable Veronica M. Barisich, District Court Judge
District Court Case No. A-20-826012-C

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that Respondent Clark County School District is a governmental entity pursuant to NRS 41.0305 and NRS 386.010; therefore, no NRAP 26.1 disclosure is required.

Dated this 7th day of January, 2022.

CLARK COUNTY SCHOOL DISTRICT
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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court committed reversible error in granting Respondent Clark County School District's ("CCSD") Motion to Dismiss based on the Nevada Industrial Insurance Act ("NIIA").
2. Whether the District Court committed reversible error in granting Respondent Vision Technologies, Inc.'s Motion to Dismiss based on the NIIA.
3. Whether the District Court committed reversible error in finding that Respondent CCSD was Appellant Mario Salas' employer under the NIIA.
4. Whether the District Court abused its discretion in denying Appellant Salas' request to amend his complaint.

I. STATEMENT OF THE CASE

On December 8, 2020, Appellant Mario A. Salas (“Appellant Salas”) filed his Complaint in this matter naming Respondents Clark County School District (“CCSD”) and Vision Technologies, Inc. as defendants. Appellant Salas’ Complaint alleged negligence against all defendants; respondeat superior, negligent entrustment, hiring, training, and supervision against CCSD; and claims of negligence and strict product liability against the Doe and Roe defendants. *Appellant’s Appendix (“AA”) Vol. I, at APP1-31*. Appellant Salas’ Complaint alleged that he was employed by Respondent Vision Technologies at all times relevant and that he was injured while acting in the course and scope of his employment. Appellant Salas’ Complaint further alleged that Respondent CCSD “employed Defendant Vision...to perform information technology services in the areas of the toxic buildup of dust and other particles.” *AA Vol. I, at APP32-42; at ¶¶3, 25, and 33*.

On January 22, 2021, *Defendant Vision Technologies, Inc.’s Motion to Dismiss* was filed arguing that the exclusive remedy provision of the Nevada Industrial Insurance Act (“NIIA”) barred Appellant Salas’ claims.

On January 28, 2021, *Defendant Clark County School District’s Motion to Dismiss and Joinder to Defendant Vision Technologies, Inc.’s Motion to Dismiss* was filed arguing that Appellant Salas was unable to maintain his claims against

Respondent CCSD because the NIIA is the exclusive remedy for Appellant Salas' claims because he was in the course and scope of his employment with Respondent Vision Technologies. Respondent CCSD's Motion to Dismiss further argued that it had employed Respondent Vision Technologies to perform work thereby deeming Appellant Salas an employee of Respondent CCSD. *NRS 616A.210*.

On February 2, 2021, Appellant Salas opposed both Respondents' Motions to Dismiss. *AA Vol. I, at APP0053-069*. Appellant Salas argued that his denial of worker's compensation claims meant that Respondents failed to "provide and secure compensation under chapters 616A to 616D, inclusive, of NRS." *AA Vol. I, at APP61-63*.

On February 23, 2021, *Defendant Vision Technologies, Inc.'s Reply in Support of its Motion to Dismiss* was filed arguing that the administrative appeal process set forth in NRS 616C.315 was the proper mechanism for Appellant Salas to appeal his contested worker's compensation claim and not by filing a complaint in the district court. *Respondents' Appendix Vol. I, at APP238*.

On March 31, 2021, *Order Granting (1) Defendant Vision Technologies, Inc.'s Motion to Dismiss, and (2) Defendant Clark County School District's Motion to Dismiss and Joinder* ("Order Granting Dismissal") was entered. *AA Vol. I, at APP105-110*. The Order Granting Dismissal found that as Appellant Salas conceded that "he was working within the course and scope of his employment with [Vision

Technologies], the NIIA must be applied as an exclusive remedy.” *AA Vol. I, at APP108*. The District Court further found that Appellant Salas admitted that his employer, Respondent Vision Technologies, “was hired by CCSD for the work at CCSD’s premises; therefore, under N.R.S. § 616A.210, [Appellant Salas] must be deemed to be an employee of the principal contractor, CCSD, for the purposes of NIIA. Thus, again NIIA exclusive remedy provision is applicable to CCSD.” *AA Vol. I, at APP108*. The District Court also found that there was “no applicable exemption to the exclusive remedy doctrine as [Appellant Salas] does not allege that [Respondent Vision Technologies] deliberately and specifically intended to injure [Appellant Salas]. Mere allegation that [Respondent Vision Technologies] was aware of the alleged hazardous conditions and failed to correct them or provide safety equipment is inadequate [] to overcome the NIIA exclusive remedy provision.” *AA Vol. I, at APP108*. The District Court found that Appellant Salas’ request for leave to amend was inappropriate because he failed to comply with EDCR 2.30(a) requiring him to attach a copy of the proposed pleading to the request and an amendment to the complaint “would be futile in overcoming the exclusive remedy provision of the NIIA.” *Id.*

II. SUMMARY OF THE ARGUMENT

This Court should affirm the District Court’s Order Granting Dismissal as the NIIA is the exclusive remedy in this case. The District Court did not commit

reversible error in granting Respondents' Motions to Dismiss because it is well established that the NIIA is the exclusive remedy for Appellant Salas' worker's compensation claim. Appellant Salas failed to allege any applicable exemptions under the NIIA, failed to allege that Respondents did not provide for worker's compensation benefits as required under NRS 616A to 616D, and failed to allege that Respondent Vision Technologies was not a subcontractor of Respondent CCSD.

III. STANDARDS OF REVIEW

The District Court's granting of a motion to dismiss pursuant to NRCP 12(b)(5) "'is subject to a rigorous standard of review on appeal.'" *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008) (citation omitted). The appellate court recognizes all factual allegations in the complaint as true and draws all inferences in favor of the appellant. *Buzz Stew*, 124 at 228, 181 P.3d at 672. Moreover, a "complaint should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief." *Id.* Finally, the appellate court reviews "the district court's legal conclusions de novo." *Id.*

IV. LEGAL ARGUMENTS

A. Respondent CCSD Was Appellant Salas's Statutory Employer

When an employee sustains an injury in the course of his employment, the NIIA provides that "[t]he rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained

arising out of and in the course of the employment shall be exclusive, except as otherwise provided in those chapters.” *NRS 616A.020(1)*. The NIIA’s exclusive remedy provision extends to “subcontractors, independent contractors and the employees of either shall be deemed to be employees of the principal contractor for the purposes of chapters 616A to 616D, inclusive, of NRS.” *NRS 616A.210(1)*. Appellant Salas’ Complaint alleged that he was employed by Respondent Vision Technologies when the subject incident happened and further alleged that Respondent CCSD “employed Defendant Vision...to perform information technology services in the areas of the toxic buildup of dust and other particles.” *AA Vol. I, at APP32-42; at ¶¶3, 25, and 33*. Additionally, Appellant Salas’ Complaint alleges that Respondent CCSD “controlled the premises located at 2832 E. Flamingo Rd., Las Vegas, Nevada 89121” where the subject injury occurred. *AA Vol. I, at APP2, at ¶2*. Taking these allegations as true, as required, Appellant Salas was an employee of Respondent CCSD thereby providing Respondent CCSD with the statutory immunity set forth in the NIIA.

The Nevada Supreme Court has held that a property owner is statutorily immune from an injured worker’s claim “‘regardless of whether [the owner] or [the general contractor] was in fact [the injured worker’s] employer.” *Harris v. Rio Hotel & Casino, Inc.*, 117 Nev. 482, 485, 25 P.3d 206, 208 (2001) (citation omitted). In the present case, it must be accepted as true that Respondent CCSD was the property

owner where Appellant Salas was injured; therefore, Respondent CCSD is afforded the benefits of the NIIA and the NIIA is the exclusive remedy for Appellant Salas' claims. Appellant Salas cannot maintain a civil law action against Respondent CCSD for the injuries he alleges he sustained as set forth in the Complaint.

Moreover, the Nevada Supreme Court has reasoned that “[s]ince a principal contractor or principal employer undertaking a construction project is held responsible, statutorily, for all the workers on the project, the principal should enjoy the corresponding benefit of statutory immunity.” *Harris*, 117 Nev. at 487, 25 P.3d at 210. Respondent CCSD is considered the principal contractor or principal employer for the work performed since it employed Respondent Vision Technologies to complete the work. *AA Vol. I, at APP9, at ¶25*. As such, Respondent CCSD was properly deemed to be Appellant Salas' statutory employer providing Respondent CCSD with the immunities set forth under the NIIA.

Appellant Salas futilely attempts to argue that Respondent CCSD is not considered an employer of Appellant Salas under the NIIA due to the independent enterprises exception set forth in NRS 616B.603. Appellant Salas relies upon *Meers v. Haughton Elevator, a Div. of Reliance Elec. Co.*, 101 Nev. 283, 285, 701 P.2d 1006, 1007 (1985) to argue that Respondent CCSD's enterprise of education “differs greatly from [Respondent] Vision Technologies, Inc., which is engaged in profession of support and maintenance of IT systems.” *Appellant's Brief, at p. 17*.

In the present case, the exception set forth in NRS 616B.603 is not applicable because there is no “independent enterprise.” Appellant Salas’ Complaint fails to make any allegations regarding an independent enterprise or that Respondent CCSD and Respondent Vision Technologies were not engaged “in the same trade, business, profession or occupation as the independent enterprise.” *NRS 616B.603(1)(b)*.

Additionally, in the *Harris* case, the Nevada Supreme Court clarified that

under NRS 616B.603 and *Meers*, upon which the statute is based, a person who enters into a contract with an independent enterprise in a different line of work, to perform work not normally carried out by the person's own employees, is not considered a statutory employer.⁵⁰ This makes sense, given the overall purpose of workers' compensation, because it places responsibility on independent enterprises, which are separate business entities, for their own employees and not the employees of other independent enterprises with which they interact. Such contracting independent enterprises do not enjoy employer immunity from suit by the other's employees, but their liability for providing workers' compensation coverage is clearly defined and limited in scope.

Harris, 117 Nev. at 492, 25 P.3d at 212–13. In the present case, Appellant Salas does not make any allegations that the work he was performing was in a different line of work than what he normally carried out by Respondent Vision Technologies’ own employees. Appellant Salas’ Complaint is void of any arguments that would exempt the NIIA from applying the Respondent CCSD. Additionally, Appellant Salas has failed to make any allegations that Respondents CCSD or Vision Technologies were not licensed contractors; therefore, the provisions of NRS 616B.603 cannot apply.

The District Court properly found that Respondent CCSD was Appellant Salas’ “employer” under the NIIA making the NIIA the exclusive remedy. The District Court did not commit reversible error in granting the Motions to Dismiss and this Court should uphold the District Court’s Order Granting Dismissal.

B. Failure to Grant Worker’s Compensation Benefits In Not An Exception to the Exclusive Remedy Provision of the NIIA

Appellant Salas argues that the District Court erred in holding that the NIIA was the exclusive remedy for his claims against Respondents because Respondents CCSD and Vision Technologies denied Appellant Salas’ request for worker’s compensation benefits. Appellant Salas’ reasoning is incorrect because a denial of a claim is not the failure to secure benefits under the NIIA, as discussed more fully below. This Court should affirm the District Court’s ruling granting the Motions to Dismiss.

Appellant Salas’ argument is that Respondents CCSD and Vision Technologies are not afforded the rights and protections under the NIIA because Appellant Salas’ request for worker’s compensation benefits was denied. Appellant Salas argues that the failure to grant his request for worker’s compensation benefits means that Respondents CCSD and Vision Technologies do not “secure and provide compensation” under the NIIA and, therefore, Respondents do not have the rights and immunities of the exclusive remedy protections set forth in the NIIA. However, denial of a worker’s compensation claim does not exclude an employer from the

protections of the NIIA. Appellant Salas has failed to allege that Respondents CCSD and Vision Technologies did not “secure and provide compensation under chapters 616A to 616D, inclusive of NRS” as required for the NIIA not to be the exclusive remedy. *NRS 616B.636*. The failure to “provide and secure compensation” means that the employer has failed to pay the premiums as required pursuant to chapters 616A to 617, inclusive of the NRS. An employer has the right to be a self-insured employer “by establishing to the satisfaction of the Commissioner that the employer has sufficient administrative and financial resources to make certain the prompt payment of all compensation under chapters 616A to 616D, inclusive, or chapter 617 of NRS.” *NRS 616B.300*. In the present case, Appellant Salas has failed to allege that Respondent CCSD is not certified as a self-insured employer nor has Appellant Salas alleged that Respondent Vision Technologies did not possess a certificate of insurance in compliance with the provisions of chapters 616A to 616D, inclusive, of the NRS. Appellant Salas’ argument is without merit and is not supported by any Nevada law. Appellant Salas’ Complaint was void of any allegations that Respondents CCSD and Vision Technologies did not carry the required worker’s compensation coverage for his claim; therefore, the exclusive remedy provisions of the NIIA are applicable. Appellant Salas’ argument is that the denial of his claim permits him to bring a civil action in contradiction of the black letter law of the NIIA.

The District Court's Order Granting Dismissal was based on sound Nevada law and should be sustained by this Court.

As a note, if Appellant Salas wished to appeal the denial of his worker's compensation claim the proper avenue was through the administrative process as provided in NRS chapter 616C, which the District Court noted in the Order Granting Dismissal. The District Court found that Appellant Salas' argument that his "worker's compensation claim was rejected is irrelevant to the issue at hand...even if the [District] Court entertains this argument that was presented only in [Appellant Salas'] Opposition, N.R.S. § 616C. 315 *et seq.* provides for an appropriate administrative appeal procedure of the rejected claim." *AA Vol. I, at APP108.*

Additionally, Appellant Salas makes an argument that since Nevada is a notice pleading state that he did not need to allege in his complaint that he was denied worker's compensation benefits. *Opening Brief, at p. 13.* It is unclear what the point of this argument is. As set forth above, the denial of Appellant Salas' worker's compensation benefits was not the reason the District Court dismissed Appellant Salas' complaint. In fact, the District Court did not even entertain the denial of Appellant Salas' worker's compensation request when issuing the Order Granting Dismissal. *AA Vol. I, at APP108.* The District Court found that dismissal of Appellant Salas' Complaint was appropriate because the NIIA was the exclusive remedy. Appellant Salas' notice pleading argument is a flawed argument.

C. The District Court's Order Granting Dismissal Must Be Upheld Because Appellant Salas Failed to Set Forth Allegations Necessary to Show that An Exemption to the Applicability of the NIIA Was Present

Appellant Salas incorrectly argues that District Court overlooked Appellant Salas' allegations that Respondents' actions were intentional. The Order Granting Dismissal specifically states that the District Court "accepts all factual allegations in the Complaint as true and draw all inferences in [Appellant Salas'] favor as must be done on a motion to dismiss." *AA Vol. I, at APP108*. The District Court further explicitly found that

There is no applicable exemption to the exclusive remedy doctrine as [Appellant Salas] does not allege that [Vision Technologies] deliberately and specifically intended to injure [Appellant Salas]. Mere allegation that [Vision Technologies] was aware of the alleged hazardous conditions and failed to correct them or provide safety equipment is inadequate [] to overcome the NIIA exclusive remedy provision.

AA Vol. I, at APP108. The District Court properly considered the allegations set forth in Appellant Salas' Complaint along with the arguments of the parties and properly found that dismissal of Appellant Salas' Complaint was appropriate due to the NIIA being the exclusive remedy available to Appellant Salas.

Here, Appellant Salas has failed to set forth any allegations that Respondents intended to harm him. The only way for Appellant Salas to establish that the immunities set forth in the NIIA are not applicable is through proof of affirmative

conduct that is designed to cause harm. There is no such evidence in this case. Appellant Salas is required to plead that Respondents CCSD and Vision Technologies committed an intentional tort. *See Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 874, 8 P.3d 837, 840 (2000). Under the NIIA, an accident “means an unexpected or unforeseen event happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury.” *NRS 616A.030*. The Nevada Supreme Court has held that in order for an employer’s conduct to give rise to the exemption of the NIIA being the exclusive remedy for a worker’s injuries, the employer “deliberately and specifically intended to injure” the employee. *Conway*, 116 Nev. at 875, 8 P.3d at 840 (citations omitted). “The relevant inquiry is not the degree of negligence or even depravity on the part of the employer, but the more narrow question of whether the specific action that injured the employee was an act intended to cause injury to the employee.” *Conway*, 116 Nev. at 874, 8 P.3d at 840 (citations omitted). The *Conway* Court further reasoned that, “[i]f an employee may exempt his or her claim from the exclusive remedy provision of the NIIA by merely pleading that the employer knew of a condition and failed to remedy it, then the workers’ compensation system would be rendered meaningless.” *Conway*, 116 Nev. at 875, 8 P.3d at 841.

In the present case, Appellant Salas’ Complaint simply makes mere allegations that his employers “cause[d] and allow[ed] an unreasonably hazardous

and dangerous condition” to exist; “knew or, through the exercise of ordinary care and diligence, should have known, that said premises was in an unsafe manner so as to create a defective and dangerous condition for anyone in the area;” and that they “acted with a conscious disregard for the safety of the personnel involved even though [Respondent] CCSD...was aware of the possible and probable consequences of its grossly negligent and malicious behavior.” *AA Vol. I, at APP6-9, ¶¶18, 19, and 26*. Nowhere in Appellant Salas’ 31-page Complaint is there an allegation of an intent to harm Appellant Salas by Respondents CCSD or Vision Technologies. The present case is analogous to the *Conway* case; Appellant Salas’ allegations are inadequate to exempt his claim from the exclusive remedy provision of the NIIA. If the District Court’s Order Granting Dismissal is reversed, then the worker’s compensation system would be rendered meaningless.

The District Court’s Order Granting Dismissal was within the sound provisions of the NIIA and the Nevada case law interpreting the NIIA. The District Court correctly found that Appellant Salas failed to make any allegations of intentional conduct on the part of Respondents CCSD and Visions Technologies to injure him. Therefore, the District Court’s Order Granting Dismissal is properly affirmed.

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D. The District Court Was Correct In Denying Appellant Salas' Request to Amend His Complaint

As an initial matter, Appellant Salas did not comply with the Rules of Practice for the Eighth Judicial District Court as his request to amend his complaint did not have the proposed amended complaint attached thereto. “A copy of the proposed amended pleading **must be attached** to any motion to amend pleadings.” *EDCR 2.30(a)(emphasis supplied)*. Appellant Salas’ failure to follow the local rule supports the District Court’s denial of Appellant Salas’ request to amend the complaint. Appellant Salas’ failure to attach the proposed amended complaint deprived the District Court with the ability to evaluate whether or not amending the complaint would cure the defects in the original complaint. The District Court was well within its discretion to deny Appellant Salas’ request to amend and the ruling should be upheld.

Once Appellant Salas did provide the District Court with the proposed amended complaint, the District Court reviewed and compared it with the original complaint properly finding that the proposed amended complaint was still insufficient to overcome the exclusive remedy provision of the NIIA. The proposed amended complaint contain minor changes with the “most notable change [] in paragraph 17, wherein [Appellant Salas] alleges certain actions by User Support Services, a division of [Respondent] CCSD. However, the changes still fail to sufficiently show that [Respondents’] acts were done with specific intent to cause

injury to” Appellant Salas. *AA Vol. I, at APP227*. It cannot be said that the District court abused its discretion in denying Appellant Salas’ request to amend his complaint because such amendment would have been futile. *See Allum v. Valley Bank of Nevada*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993) (citation omitted).

V. CONCLUSION

Based upon the foregoing, Respondent Clark County School District respectfully requests that this Court uphold the District Court’s, *Order Granting (1) Defendant Vision Technologies, Inc.’s Motion to Dismiss, and (2) Defendant Clark County School District’s Motion to Dismiss and Joinder* entered on March 31, 2021 because the District Court did not commit any reversible error in finding that the NIIA was Appellant Salas’ exclusive remedy and Appellant Salas failed to set forth any valid exemptions to the applicability of the NIIA. Furthermore, the District Court’s finding that Appellant Salas should not be entitled to amend his pleading was within its sound discretion and should not be overturned.

Dated this 7th day of January, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 40 or 40A because it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7th day of January, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of January, 2022, I served a true and correct copy of the ***RESPONDENT CLARK COUNTY SCHOOL DISTRICT'S ANSWERING BRIEF*** by transmitting via the Court's electronic filing services, pursuant to NEFCR 9, to all listed on the service list, including the following:

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