IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISRAEL BAIGUEN, AN INDIVIDUAL,
Appellant,
vs.
HARRAH'S LAS VEGAS, LLC, A NEVADA DOMESTIC LIMITED-LIABILITY CORPORATION, D/B/A HARRAH'S CASINO HOTEL, LAS VEGAS; AND CAESARS ENTERTAINMENT CORPORATION, A NEVADA FOREIGN CORPORATION, D/B/A HARRAH'S CASINO HOTEL, LAS VEGAS,
Respondents.

No. 70204

FILED

FEB 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a grant of summary judgment to a defendant in a negligence claim. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Israel Baiguen, appellant, was an employee of Harrah's, respondent. Baiguen suffered a stroke sometime between driving to work and prior to the start of his shift. Baiguen's co-workers saw him exhibiting signs of distress in the parking lot and the clocking-in area before work, but nobody seemed to realize that Baiguen's condition was as serious as a stroke. A co-worker volunteered to drive Baiguen home, and Baiguen's supervisor agreed. A group of co-workers dropped Baiguen off at home, where he remained unattended for two days and eventually suffered various permanent injuries.

Baiguen sued Harrah's for negligence, claiming that its failure to render him timely medical aid reduced his chances of avoiding permanent harm from the stroke. Baiguen offered expert deposition

17-900398

testimony to the effect that, had he been treated at a hospital within three hours of first exhibiting symptoms, his chance of being permanently disabled may have been lessened by as much as 30%. Harrah's moved for summary judgment, arguing that Baiguen's sole remedy was workers compensation, not a negligence suit, and furthermore that Baiguen failed to establish the elements of duty and causation as a matter of law. The district court declined to reach the merits of Baiguen's negligence claim, instead holding that Baiguen's tort claim was precluded by the workers compensation statute, which provided his only remedy.[1] This appeal followed.

This court reviews grants of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.*

For an injury to be compensable under Nevada's workers compensation laws, the injury must have occurred "in the course" of employment and it must have "arisen out of" the employment. NRS 616C.150. If the injury is compensable under workers compensation, then the workers compensation statute provides the sole remedy for that injury. NRS 616A.020(1). Whether an injury is solely compensable via workers compensation is a question of law. *See D&D Tire v. Ouelette*, 131 Nev. ___, ___, 352 P.3d 32, 34 (2015).

Whether an injury is deemed to occur during the course of employment "refers merely to the time and place of employment, *i.e.*,

---

[1]We do not recount the facts except as necessary to our disposition.

whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties." *Wood,* 121 Nev. at 733, 121 P.3d at 1032. Because Baiguen was on the premises of his place of employment and was proceeding to work when he experienced the stroke, the injury occurred in the course of employment. *See MGM Mirage v. Cotton*, 121 Nev. 396, 400, 116 P.3d 56, 58 (2005) ("An injury sustained on an employer's premises while an employee is proceeding to or from work is considered to have occurred 'in the course of employment.'") (adopting the so-called "parking lot rule"). Accordingly, the district court did not err by holding that Baiguen's injury occurred during the course of employment.

Whether Baiguen's injury "arose" from his employment presents a more nuanced question. "An injury is said to arise out of one's employment when there is a causal connection between the employee's injury and the nature of the work or workplace." *Wood*, 121 Nev. at 733, 121 P.3d at 1032.

When deciding if that causal link exists, "determining the type of risk faced by the employee is an important first step in analyzing whether the employee's injury arose out of her employment." *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 350, 240 P.3d 2, 5 (2010). Nevada divides such risks into three categories: personal, neutral, and employment-related. *Id.* Generally speaking, an "employment-related risk" represents a risk created entirely by the workplace and that the worker would not have faced had he not been employed at the particular job where the injury occurred. A "personal risk" is one that the worker would inevitably have faced regardless of whether he had been employed at the particular workplace or not. A "neutral risk" falls between the two

and courts employ an "increased risk" test to determine causation: if the court finds that the risk was neutral but that the workplace or its conditions "increased the risk" of an injury that might have happened anyway had the worker not been employed but whose danger or severity was elevated by workplace conditions, then a causal link is established and the injury is deemed to have "arisen" from the workplace. *Id.* at 353, 240 P.3d 2, 7.

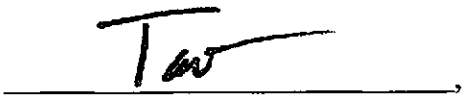
The unique facts of this case raise a valid question regarding whether the risk of Baiguen's injuries should properly have been classified as "personal" or "neutral." However, under either categorization of risk, we conclude that Baiguen's injuries (whether characterized as the stroke itself or the lack of immediate care in its aftermath) did not "arise" from employment—if the risk was "personal" (meaning that he would have suffered the stroke with 100% certainty regardless of his employment), then no causal link exists; if the risk was "neutral," the existing record does not demonstrate that either Baiguen's duties as a houseperson or the particular working conditions at Harrah's "increased the risk" of Baiguen's stroke. *See Rio*, 126 Nev. at 354, 240 P.3d at 7 (explaining that neutral risks are those that are "'of neither distinctly employment nor distinctly personal character,'" and that a causal link exists only if the employee faces an "increased risk" of injury by the employment) (quoting 1 Arthur Larson & Lex. K. Larson, *Larson's Workers' Compensation Law* § 4.03, at 4–2). Thus, Harrah's failed to establish it was entitled to summary

judgment as a matter of law on this issue and the district court erred by holding that Baiguen's injuries "arose" from employment.[2]

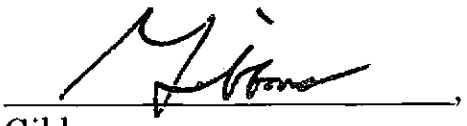
Accordingly, we

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

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

---

[2]Before the district court, Harrah's also moved for summary judgment on the ground that, even if Baiguen could pursue a negligence claim, Baiguen failed to establish the causation element of his negligence claim. Baiguen established that he was owed a duty as a matter of law, because as both an employer and a landowner, Harrah's possesses an affirmative duty to aid those on its premises who are "in peril." *Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212 (2001). Further, based on our review of the record, there exist genuine issues of material fact regarding breach and causation, such that summary judgment was improper. *Id.* ("'[c]ourts are reluctant to grant summary judgment in negligence cases because foreseeability, duty, proximate cause and reasonableness usually are questions of fact for the jury") (*quoting Thomas v. Bokelman*, 86 Nev. 10, 13, 462 P.2d 1020, 1022 (1970)).

cc: Hon. Douglas W. Herndon, District Judge
Janet Trost, Settlement Judge
Law Offices of Steven M. Burris, LLC
Fisher & Phillips LLP
Eighth District Court Clerk