

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC BROWN AND JULIE BROWN,
HUSBAND AND WIFE; MARCOS J.
GARCIA AND ALMA L. GARCIA,
HUSBAND AND WIFE; LINDA
KENNEDY; DENNIS N. BLUNDELL
AND AMY-MARIE BLUNDELL,
HUSBAND AND WIFE; AND JUDY
KROSHUS,
Appellants,
vs.
COUNTY OF CHURCHILL,
Respondent.

No. 43151

FILED

JUL 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Hulse*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment, certified as final under NRCP 54(b), in an action for nuisance and inverse condemnation. Third Judicial District Court, Churchill County; David A. Huff, Judge.

The Pine Grove Subdivision is a 77-home residential development located near Fallon, Nevada, in the respondent County of Churchill. The subdivision's developer created a utility trust to own and manage water and sewage systems because the County was unable to provide and manage them at the time. The developer and his wife served as the trust's settlors, one of the developer's companies served as the operating trustee, and the County was named as the beneficiary of the trust.

After experiencing electrical and computer problems, the sewage plant allegedly emitted noxious odors, prompting the appellants to file two separate actions against various parties for a number of causes of



action, including claims of nuisance and inverse condemnation against the County. The district court consolidated the two actions. The County moved for summary judgment, arguing that it was a beneficiary of the utility trust, not the trustee or operator of the system, and therefore was not liable for the activities claimed by the plaintiffs. The County attached the affidavit of County manager Bjorn Selinder, in which he averred that the County was not concerned in any way with the management or day-to-day operations of the utility trust. The district court granted the County summary judgment.

On appeal, the appellants argue that the district court erred in granting summary judgment to the County because fact-based issues of control and liability remain. The appellants argue that the County is a necessary party because: (1) the trustee's allegedly negligent operation of the sewage system risked impairing the County's ability to protect its interest in the trust estate under NRCP 19¹; (2) the County will come into complete ownership and control of the trust within a few years, and has the option to take control earlier; and (3) the County retains substantial control over the trustee in the management of the system, so the trustee is merely the County's agent. We conclude that the appellants' arguments lack merit.

This court reviews a district court's grant of summary judgment de novo and without deference to the findings of the lower

¹However, all remaining claims against all other parties apart from the County were resolved by settlement, so this argument and issue are moot.

court.² Pursuant to NRCP 56, summary judgment is appropriate and “shall be rendered forthwith” if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, demonstrate that no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law.³ This court has also noted that when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.⁴

Determining which facts are material is controlled by the substantive law, and only disputes over facts that affect the outcome under the governing law will preclude summary judgment; other factual disputes are irrelevant.⁵ A factual dispute is genuine when the evidence is such that a rational juror could return a verdict for the non-moving party.⁶ While the non-moving party is entitled to have the pleadings and other proof construed in a light most favorable to the non-moving party, the non-moving party must “do more than simply show that there is some metaphysical doubt” as to the operative facts, but must, by affidavit or

²Wood v. Safeway, Inc., 121 Nev. ___, ___, ___, 121 P.3d 1026, 1029, 1031 (2005).

³Id.; NRCP 56(c).

⁴Wood, 121 Nev. at ___, 121 P.3d at 1029.

⁵Id. at ___, 121 P.3d at 1031, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

⁶Id. at ___, 121 P.3d at 1031, citing Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 586 (1986); Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.⁷

Generally, a beneficiary is not liable to third persons for torts committed by the trustee in the administration of the trust.⁸ However, a trustee who is also an agent of the beneficiary can in his capacity as an agent subject the beneficiary to liabilities incurred in the administration of the trust.⁹ A trustee is also an agent of the beneficiary if he acts on behalf of the beneficiary and is subject to his control.¹⁰

Here, the material facts in this case are not in dispute: neither the operating trustee nor the water and sewage systems were subject to the County's control. The County manager averred that the County was not concerned in any way with the management or day-to-day operations of the utility trust, and the appellants failed to provide any counter-evidence demonstrating the existence of a genuine trial issue on this outcome-determinative point. Although the County retained a future interest in control of the utility trust, evidence in the record indicates that it had yet to exercise its option to terminate the trust and assume control of the systems' operations. Further, the alleged indices of control to which the appellants point, e.g., subjecting rates of service to the approval of the County's board of commissioners, were normal regulatory duties of the

⁷Wood, 121 Nev. at ___, 121 P.3d at 1031, citing Matsushita, 475 U.S. at 586.

⁸Restatement (Second) of Trusts § 276 (1959).

⁹Id., § 274 cmt. b.

¹⁰Id.; see also Just Pants v. Bank of Ravenswood, 483 N.E.2d 331, 335 (Ill. App. Ct. 1985).

County. The operations and maintenance of the systems themselves—the source of the noxious fumes—were subject to the powers of the operating trustee, not the beneficiary. We conclude that because the record yields no genuine issue of material fact, the district court did not err in granting the County judgment as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Glade L. Hall
Rands, South, Gardner & Hetey
Churchill County Clerk