IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MCKENZIE AND CATHERINE MCKENZIE,
Appellants,
vs.
VISTA NURSERY AND LANDSCAPE SUPPLY,
Respondent.

No. 43528

FILED

FEB 17 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment to respondent, certified as final under NRCP 54(b). Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellants John and Catherine McKenzie sued respondent Vista Nursery and Landscape Supply, along with other defendants, for injuries John received in a multiple-car accident, which was allegedly caused by the negligent driving of a large rock-hauling truck. John's legs were severely injured. John sought damages for negligence and negligent entrustment, and Catherine asserted claims for loss of consortium and negligent infliction of emotional distress. The district court granted summary judgment for Vista, concluding that as a matter of law Vista was not vicariously liable for the actions of the truck driver or the truck's owner, and thus Vista could not be held liable for the McKenzies' damages. This appeal followed.

We review orders granting summary judgment de novo.[1] "Summary judgment is appropriate under NRCP 56 when the pleadings,

[1]Wood v. Safeway, Inc., 121 Nev. ___, ___, 121 P.3d 1026, 1029 (2005).



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depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."[2]

The McKenzies argue that genuine issues of material fact concerning the relationship between Vista, the truck owner and the truck driver precluded summary judgment. They also argue that since the district court had denied an earlier motion for summary judgment, the law of the case doctrine prohibited the district court from granting the renewed motion. We conclude that the district court did not err.

First, nothing in the record suggests that the truck owner was Vista's employee at the time of the accident in June 2002.[3] Even if the truck owner had, during a brief period in the fall of 2001, been an employee rather than an independent contractor, the McKenzies presented no evidence that the relationship continued beyond November 2001. Additionally, the undisputed barter arrangement between Vista and the truck owner does not establish a joint venture.[4] Notably, no evidence of an agreement to operate a joint enterprise, with the parties to share in the profits, was presented. Finally, the law of the case doctrine

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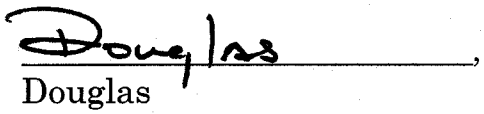
[2]Id. at ___, 121 P.3d at 1031.

[3]See Rockwell v. Sun Harbor Budget Suites, 112 Nev. 1217, 925 P.2d 1175 (1996).

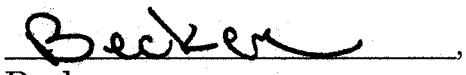
[4]See Bruttomesso v. Las Vegas Met. Police, 95 Nev. 151, 591 P.2d 254 (1979).

applies only to appellate court rulings;[5] it does not prohibit a district court from considering a renewed motion for summary judgment as in this case.[6] Accordingly, since the district court did not err in granting summary judgment for Vista, we

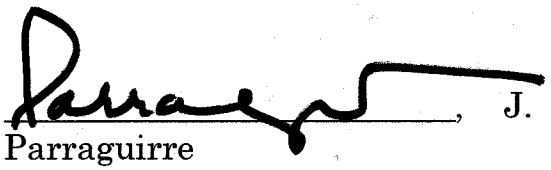
ORDER the judgment of the district court AFFIRMED.[7]



_____, J.
Douglas



_____, J.
Becker



_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Benson, Bertoldo, Baker & Carter, Chtd./Las Vegas
Stephenson & Dickinson
Clark County Clerk

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[5]See Geissel v. Galbraith, 105 Nev. 101, 769 P.2d 1294 (1989), holding modified on other grounds by Willerton v. Bassham, 111 Nev. 10, 17-18 n.6, 889 P.2d 823, 827-28 n.6 (1995).

[6]See NRCP 54(b) (providing that the district court is free to reconsider its rulings until entry of a final judgment).

[7]We have determined that oral argument is not warranted in this appeal. See NRAP 34(f)(1).