IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT KERR,
Appellant,
vs.
LAS VEGAS VALLEY WATER DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 43899

FILED

MAR 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in favor of respondent Las Vegas Valley Water District (LVVWD) in a personal injury action. Eighth Judicial District Court, Clark County; Noel E. Manoukian, Senior Judge. Appellant Robert Kerr argues that LVVWD had express knowledge of the dangerous condition of a manhole cover that flipped over when he stepped on it and that as a result, LVVWD enjoys no immunity from suit under NRS 41.033. We disagree and conclude that the district court properly ordered summary judgment in favor of LVVWD.[1]

[1]Summary judgment is appropriate when the pleadings and other evidence on file demonstrate that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c); see Wood v. Safeway, Inc., 121 Nev. ____, ____, 121 P.3d 1026, 1031 (2005) (abandoning the "slightest doubt" standard of summary judgment and clarifying that "[s]ummary judgment is appropriate under NRCP 56 when the pleadings, 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"). We

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"NRS 41.033 does not provide immunity to the public entity if that entity fails to take reasonable action once it gains express knowledge of the hazard."[2] Kerr alleges no genuine issue of material fact to the question of whether LVVWD had express knowledge of the existence of a hazardous condition. Kerr's allegation that there was debris on the lip of the manhole following the accident does not demonstrate that LVVWD had express knowledge of a hazardous condition, as required by NRS 41.033, or that LVVWD employees John Rux and Keith Hartwell caused that hazardous condition. Kerr infers that Rux and Hartwell worked in the manhole the day before the accident and there was debris on the rim of the manhole.

These inferences are purely speculative. Kerr must prove his case at trial by a preponderance of the evidence. Since Kerr failed to allege a genuine issue of material fact as to whether LVVWD had express knowledge of a hazardous condition, we conclude that the district court did not err in granting summary judgment.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Hardesty

. . . *continued*
review a district court's grant of summary judgment de novo. GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001).

[2]Chastain v. Clark County School District, 109 Nev. 1172, 1175, 866 P.2d 286, 288 (1993).

cc: Hon. Noel E. Manoukian, Senior Judge
Potter Law Offices
Law Offices of Melissa P. Harris
Clark County Clerk