

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS JUNIOR COOPER, III,
Appellant,
vs.
JERRY KELLER, LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT; B. ARIZMENDI; JOHN
DOE FREER; LT. JOHN DOE BAKER;
S. ZOLMAN; SGT. JOHN DOE
CRICKETT; JOHN DOE MCZOLLA;
AND DET. JOHN DOE BARKER,
Respondents.

No. 44676

FILED

NOV 10 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting summary judgment to respondents on appellant's civil complaint. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In the proceedings below, appellant filed a complaint alleging that the Las Vegas police officer respondents had stolen his property, assaulted and battered him, and used excessive force while detaining him at the Clark County Detention Center (CCDC) on suspicion of robbery. Appellant, who is an inmate at Lovelock Correctional Center (LCC), then filed a motion for summary judgment, arguing that there were no disputed issues of material fact. Appellant attached an affidavit in support of his motion, asserting that the acts of which he complained were documented on video. He also attached a non-notarized affidavit from George Marsten, "the Vice President of U.S. Law Corporation [(USLC)] for the Investigative Services Division," which stated that Marsten had "acquire[d] video taped evidence from the Metropolitan Police Department facilities installed by the FBI." Marsten's affidavit further stated that the video evidence was "maintained in [USLC's] evidence locker No. 347," and, if called to testify, he would support appellant's claims as documented in USLC's "certified

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report information.” Appellant also attached USLC’s “Investigative Report Under Seal,” which described the events recorded on the alleged videotapes, and which supported all of the allegations in appellant’s complaint.

Respondents opposed the motion and filed a countermotion for summary judgment, asserting that the Nevada Department of Prisons had determined that USLC was a fictitious corporation created by an inmate at LCC, and, while it was true that the incident at the CCDC had been recorded on DVD, the recording revealed no evidence of unlawful use of force or theft. Thus, respondents asserted that no disputed factual issues remained. Respondents provided the DVD with their countermotion.

During a hearing on the motions, and on appellant’s related motion to disqualify and sanction respondents’ attorneys, the district court viewed the DVD and determined that “the actions of [respondents] demonstrated restraint and professionalism.” The court then denied both of appellant’s motions, but reserved ruling on respondents’ countermotion for summary judgment in order to allow appellant ten days in which to provide the video evidence that he claimed existed.¹ When appellant failed to produce the evidence, the court granted respondents’ countermotion for summary judgment. Appellant then filed an NRCP 60(b) motion² “to vacate the erroneous order,” again arguing that respondents’ DVD was fraudulent and that USLC possessed the “authentic” recordings. He asserted that, because the authentic

¹Appellant was incarcerated at the time the hearing was held and did not appear for the proceedings. The district court records indicate that a copy of the minute order was mailed to appellant at LCC.

²The district court did not rule on the motion.

recordings belonged to USLC, he could not produce them until he paid USLC for them.

On appeal, appellant argues that summary judgment was not appropriate given that discovery disputes were still pending.³ He also contends that respondents' DVD "varie[d] vastly from the videos acquired by USLC," evidencing that respondents had edited the recording. Appellant does not dispute that respondents' DVD belied his claims. Instead, he argues that he was not given proper notice that he had ten days to produce the true version of the video and the district court record indicating that the order had been mailed to him had been falsified. Appellant attached numerous exhibits to his opening brief, but did not include the purportedly true recording of the CCDC incident. Notably, appellant also filed a motion in this court to disqualify respondents' attorneys on the basis that the DVD had been altered, but he again failed to provide a copy of the version that he asserts truly documents the CCDC incident.

We review orders granting summary judgment de novo.⁴ "Summary judgment is appropriate when a review of the record in the light most favorable to the nonmoving party extinguishes all issues of material fact. The essential question on appeal is whether genuine issues

³Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him. In light of the fact that respondents' answering brief was filed, we direct the clerk of this court to file appellant's opening and reply briefs and appendix, provisionally received on February 24 and July 11, 2005.

⁴Whealon v. Sterling, 121 Nev. ___, 119 P.3d 1241, 1244. (2005).

of material fact were created by pleadings and proof offered.”⁵ “Properly supported factual allegations and all reasonable inferences of the party opposing summary judgment must be accepted as true. However, conclusory statements along with general allegations do not create an issue of material fact.”⁶ To withstand summary judgment, the opposing party must be able to point out something indicating the existence of a triable issue of fact, and “is not entitled to have summary judgment denied on the mere hope that at trial he [] will be able to discredit the movant’s evidence.”⁷

Upon review of the record and consideration of the parties’ briefs, we conclude that the district court did not err in granting summary judgment. The factual allegations contained in appellant’s complaint were general, conclusory, and not properly supported, especially given that he claimed that a video recording supporting his allegations existed, and he was given an opportunity to provide such evidence but failed to do so.⁸ Instead, appellant offered only a non-notarized affidavit of questionable validity. Additionally, appellant did not dispute that respondents’

⁵Id. at ___, 119 P.3d at 1244-45 (internal quotations and citations omitted).

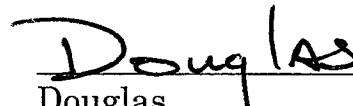
⁶Michaels v. Sudeck, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991) (citation omitted).


⁷Id. at 334, 810 P.2d at 1213-14 (internal quotations omitted).

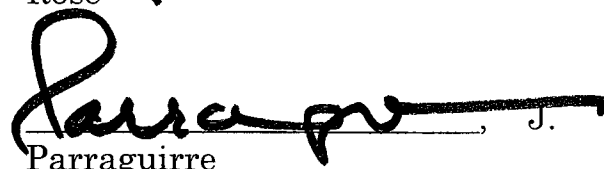
⁸The record does not support appellant’s claim that he was not provided with proper notice of the order allowing him time to provide the allegedly true copy of the video. Further, although appellant continued to lodge the same allegation of video tampering after the summary judgment order was entered, he did not provide his version of the video with either his NRCP 60(b) motion in the district court or his motion to disqualify respondents’ attorneys before this court.

recording negated his claims. Based on the pleadings and the proof offered, no genuine issues of fact remained to be tried, and, because appellant was “not entitled to have summary judgment denied on the mere hope that at trial he [would] be able to discredit [respondents’] evidence,”⁹ the district court properly granted summary judgment to respondents. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Dennis Junior Cooper III
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk

⁹See Michaels, 107 Nev. at 334, 810 P.2d at 1213-14 (internal quotations omitted).