

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH MARKLEY,
Appellant,
vs.
ESSEX INSURANCE COMPANY,
Respondent.

No. 45113

FILED

JUL 23 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Alvarado*
DEPUTY CLERK

This is a proper person appeal from a district court summary judgment in an insurance coverage action. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

In July 2001, a tractor trailer owned by appellant Keith Markley was involved in an accident while hauling a load of lumber through a mountainous stretch of highway. While making a sharp left turn, the trailer went off the road and struck an embankment. The cargo load shifted and spilled off the trailer. Markley filed a claim with his insurer, respondent Essex Insurance Company, claiming in excess of \$25,000 in damages representing lost and destroyed cargo and minor repairs to Markley's equipment. Essex denied the claim.

Markley, proceeding in proper person, filed a complaint for breach of contract against Essex. Essex moved for summary judgment, arguing that the damage to Markley's property was not caused by any of the enumerated perils covered by the insurance agreement. The district court granted Essex's motion and Markley appeals.

Standard of review

This court reviews a district court's grant of summary judgment de novo, and does not defer to the findings of the lower court.¹ Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’”² “A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.”³

Markley’s admissions during discovery

Essex contends that summary judgment was appropriate because, in response to properly served requests for admissions, Markley admitted that the damage at issue was not caused by any of the perils enumerated in the insurance contract. We agree.

NRCP 36 governs requests for admissions. During discovery, “[a] party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of [discovery] set forth in the request that relate to statements or opinions of fact or of the application of law to fact[.]”⁴ “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.”⁵ The district court must accept matters

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

²Id.

³Id. at 731, 121 P.3d at 1031.

⁴NRCP 36(a).

⁵NRCP 36(b).

deemed admitted under NRCP 36 for the purpose of a motion for summary judgment.⁶ Such admissions can serve as the basis for summary judgment when they “leave no room for conflicting inferences” and are “dispositive of the case.”⁷

In February 2004, Essex served requests for admissions on Markley pursuant to NRCP 36. Eight of these requests contain language identical to the eight covered perils enumerated in the insurance contract. In effect, Essex asked Markley to admit that the damage claimed was not caused by the eight perils enumerated in the insurance contract. Markley responded to each of these requests in the affirmative.⁸

Markley’s admissions conclusively demonstrate that there is no genuine issue of material fact regarding whether the accident damage

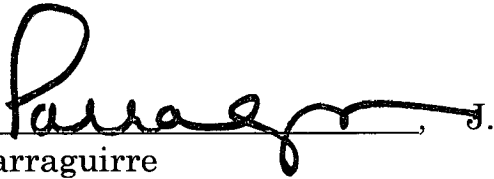
⁶Dzack v. Marshall, 80 Nev. 345, 347, 393 P.2d 610, 611 (1964).

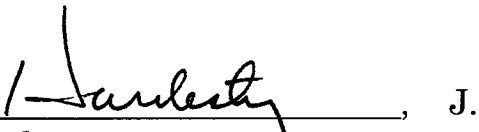
⁷Wagner v. Carex Investigations & Sec., 93 Nev. 627, 631, 572 P.2d 921, 923 (1977).

⁸There is no indication in the record that Markley ever sought to withdraw or modify these admissions.

falls under the insurance contract.⁹ We therefore affirm the district court's grant of summary judgment.

It is so ORDERED.


Parraguirre


Hardesty


Saitta

cc: Hon. Robert W. Lane, District Judge
Keith Markley
Perry & Spann/Las Vegas
Nye County Clerk

⁹The district court also concluded that no genuine issue of material fact existed whether the vehicle involved in the accident was ever covered under the insurance policy. However, we note that Markley filed an affidavit indicating that he had substituted the vehicle involved in the accident onto the policy in a timely fashion. This is sufficient to create a genuine issue of material fact. See Sawyer v. Sugarless Shops, 106 Nev. 265, 268, 792 P.2d 14, 16 (1990) (conflicting affidavits sufficient to create genuine issue of material fact, defeating summary judgment). Nonetheless, we affirm the district court's grant of summary judgment on NRCP 36 grounds.