

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SNAVELY,
Appellant,

vs.

ATC/VANCOM OF NEVADA LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP; AND ATC/VANCOM,
INC., AN ILLINOIS CORPORATION
D/B/A CITIZENS AREA TRANSIT,
Respondents.

No. 47272

FILED

JAN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a personal injury action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

This case arises from an incident in which appellant Michael Snavely was allegedly injured while a passenger on a public bus owned by respondents ATC/Vancom, ATC/Vancom of Nevada Limited Partnership, ATC/Vancom, d/b/a Citizens Area Transit (collectively, "ATC/Vancom") and operated by Thomas Hunt, an ATC/Vancom employee. We conclude that genuine issues of material fact exist as to whether Hunt's alleged negligence caused him to perform a power brake to avoid colliding with a stationary vehicle attempting to merge into an adjacent left lane. Accordingly, we reverse the judgment of the district court and remand this matter for further proceedings. The parties are familiar with the facts and we do not recount them except as necessary to our discussion.

Standard of review

This court reviews a grant of summary judgment de novo.¹ Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law.²

Discussion

The record indicates that the district court granted summary judgment in ATC/Vancom's favor after determining that Hunt took reasonable measures to avoid a collision and thus there was no evidence that ATC/Vancom breached its duty of care to Snavelly. On appeal, Snavelly contends that the district court improperly granted summary judgment because the expert opinion of his accident reconstructionist, David Elliot, presents a genuine factual dispute as to whether Hunt's own negligent operation of the bus gave rise to the near-collision that caused Hunt to perform a power brake.³

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

²Id.; see also Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 74, 110 P.3d 30, 51 (2005) (negligence requires proof of (1) an existing duty of care, (2) breach, (3) actual and legal causation, and (4) damages).

³Snavelly raises two additional arguments challenging summary judgment. First, Snavelly asserts that the determination of the element of breach in a negligence action is automatically a question of fact for the jury. Second, Snavelly asserts that the district court erred in failing to assess the evidence of ATC/Vancom's breach against a heightened standard of care applicable to common carriers. Because we conclude that the evidence presented below creates a genuine issue for trial, we do not address Snavelly's additional arguments on appeal.

Similar to other sudden stop cases, ATC/Vancom's negligence depends on whether some preceding negligence on Hunt's part created the need for him to perform a power brake.⁴ Both Hunt's speed and stopping distance at the time he first observed the merging vehicle are relevant to this inquiry. If Hunt was traveling slow enough to allow him to safely stop, his decision to perform a power brake may suggest negligence. If, however, Hunt's speed was such that a power brake was necessary, his decision may have been consistent with the safe operation of the bus.

In his opposition to ATC/Vancom's motion for summary judgment, Snavelly attached the results of a time/distance analysis conducted by David Elliot, which utilized variables derived from Hunt's deposition testimony. According to Hunt's testimony, he was traveling between 8 and 10 mph at the time he observed the merging vehicle, and had approximately 69 to 79 feet of stopping distance. Assuming that Hunt was traveling between 8 and 10 mph, Elliot concluded that Hunt could have safely stopped the bus without having to resort to emergency braking procedures.⁵ Thus, Elliot's opinion creates a reasonable inference that

⁴See, e.g., Copeland v. Greyhound Corporation, 337 F.2d 822, 825 (5th Cir. 1964) (noting that whether bus driver was negligent and whether bus driver created the emergency need to stop is the same inquiry); Dryden v. Kansas City Public Service Co., 238 P.2d 501, 504-505 (1951) (suggesting that bus driver may still be liable for negligently creating the need to sharply apply brakes even though by braking hard driver ultimately avoided a collision).

⁵Notably, ATC/Vancom did not offer an expert to rebut Elliot's opinion.

Hunt's own negligence precipitated the need to perform an emergency stop under the circumstances.⁶

On the other hand, internal incident reports from ATC/Vancom and written discovery reveal that Hunt may have been traveling greater than 20 mph. Had Hunt been traveling greater than 20 mph, Hunt may have been justified in performing a power brake. Because the record does not presently resolve the factual discrepancy between Hunt's stated speed (8 to 10 mph) and recorded speed (greater than 20 mph), we conclude that genuine issues of material fact still exist and the district court erred in granting summary judgment in ATC/Vancom's favor.⁷

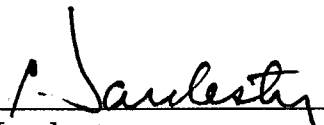
Conclusion


We conclude that genuine issues of material fact exist as to whether Hunt's own alleged negligence necessitated the rapid stop that resulted in Snavely's alleged injury; thus, the district court erred in granting summary judgment in favor of ATC/Vancom. Accordingly, we

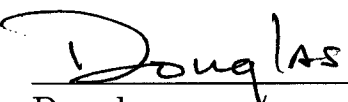
⁶For example, Hunt may have resorted to rapidly stopping the bus because he failed to keep a proper look out.

⁷An expert opinion, standing alone, may successfully create triable issues of fact to survive summary judgment. See, e.g., Medallion Dev. v. Converse Consultants, 113 Nev. 27, 930 P.2d 115 (1997) (summary judgment premature where expert opinion raised triable issue of fact that defendant was not negligent); Riley v. OPP IX L.P., 112 Nev. 826, 919 P.2d 1071 (1996) (reversing district court's order granting summary judgment because genuine issue of fact remained whether landlord breached ordinary duty of care assuming the truth of the professional opinion of plaintiff's forensic engineer).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jessie Elizabeth Walsh, District Judge
Lansford W. Levitt, Settlement Judge
Kajioka & Associates
Wolfenzon Schulman & Ryan
Eighth District Court Clerk