

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO CESAR NAVAS,  
Appellant,  
vs.  
MARY D. RYTTING, NOTARY PUBLIC,  
Respondent.

No. 47747

**FILED**

**MAR 01 2007**

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court summary judgment in a tort action. Second Judicial District Court, Washoe County; Norman C. Robison, Senior Judge.

This case arises from a divorce proceeding concerning appellant Julio Cesar Navas and his then-wife, Anna Marie Navas. Anna filed for divorce in 2002; Julio was incarcerated at the time. During the divorce proceeding, the district court entered an order granting Anna permission to sell the home that she jointly owned with Julio, based on the court's finding that the home's mortgage was in default. A subsequent order authorized, under NRCP 70, the clerk of the court to execute any documents or deeds necessary to effectuate the sale, in the event that Julio's signature was required and he refused to sign.

Thereafter, the clerk of the court, Ronald A. Longtin, Jr., signed, on Julio's behalf, a Grant, Bargain, and Sale Deed for the home. Longtin later executed a Clerk's Deed for the home, and respondent Mary Rytting, a notary public and Longtin's administrative assistant, notarized the documents. Julio filed a complaint against Rytting for damages in the district court, asserting that she had deprived him of his "Fourth Amendment right to be secured in his personal home against

unreasonable seizures,” by either negligently or fraudulently notarizing the deed for the home’s sale. According to Rytting, she was served with the complaint and summons on July 27, 2005. On August 25, 2005, Julio filed a notice of default.

Rytting filed an answer to the complaint on September 30, 2005, setting forth several affirmative defenses and providing that the damages, if any, that Julio incurred were not attributable to any act, conduct, or omission by Rytting. Julio moved to strike the answer as untimely. Rytting opposed the motion to strike, arguing that, under NRS 41.0341, her answer was timely filed and, at any rate, default was inappropriate. Rytting also moved for summary judgment, asserting that she owed no duty to Julio and, therefore, his negligence claim failed as a matter of law. Rytting maintained that, because she only notarized Longtin’s signature on documents that he was authorized to sign by court order, any claim based on fraud also failed as a matter of law.

The district court, noting that Rytting’s answer was not due at the time when Julio filed his notice of default, denied Julio’s motion to strike Rytting’s answer. The court also granted Rytting’s summary judgment motion, finding that she owed Julio no duty of care, foreclosing any negligence-based claim, and that Rytting made no misrepresentations or statements upon which Julio could have relied, entitling her to judgment as a matter of law on Julio’s fraud-based claim. Julio appeals.

Summary judgment orders are subject to de novo review on appeal.<sup>1</sup> Summary judgment in favor of Rytting was appropriate if, after

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

reviewing the record in a light most favorable to Julio, no genuine issues of material fact remain, entitling Rytting to judgment as a matter of law.<sup>2</sup>

Upon review of the record and consideration of the parties' arguments,<sup>3</sup> we conclude that the district court properly entered summary judgment in Rytting's favor. In particular, Longtin signed the documents in question with his own signature, and Rytting's duty, as notary, was to verify that the person signing the document was in fact Longtin.<sup>4</sup> Julio cited no authority to support his argument that Rytting's notary duties extended to determining whether Longtin's court-ordered authority to sign the deed was appropriate. Thus, as Rytting owed no duty to Julio, she was entitled to judgment as a matter of law on Julio's negligence claim.<sup>5</sup>

Next, because the record reveals that Julio failed to raise a genuine factual issue concerning whether Rytting made a false

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<sup>2</sup>Id.


<sup>3</sup>After this court entered an order on December 27, 2006, directing Rytting to respond to Julio's appellate arguments, Julio filed a "Notice in response to the court order," to which he attached several exhibits. Although we have considered Julio's "Notice," any documents attached thereto that were not part of the record on appeal were not considered in our resolution of this appeal. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (noting that this court cannot consider matters not properly appearing in the record). Rytting also timely filed a response to this court's December 27 order, as directed.

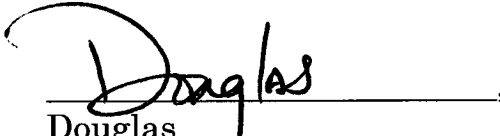
<sup>4</sup>See generally NRS 240.060-063 and 240.1655(1)(e) (describing a notary's powers and duties with regard to verifying signatures).

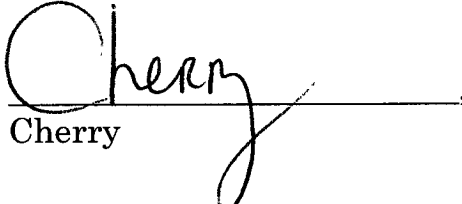
<sup>5</sup>See Harrington v. Syufy Enters., 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997) ("To establish entitlement to judgment as a matter of law [in a negligence action], the defendant need only negate one element of plaintiff's case (i.e., duty, breach, causation, or damages).").

representation upon which Julio justifiably relied to his detriment, the district court properly entered judgment in Rytting's favor on Julio's fraud claim as well.<sup>6</sup> Accordingly, we affirm the district court's summary judgment.

It is so ORDERED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>6</sup>See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992) (recognizing that the plaintiff has the burden of proving each element of a fraud claim, which includes, among other things, a false representation made by the defendant, and damages to the plaintiff based on his justifiable reliance on the defendant's misrepresentation).

<sup>7</sup>We also conclude that the district court acted within its discretion by denying Julio's motion to strike Rytting's answer, since nothing in the record indicates that Rytting's failure to answer within the time provided resulted in any injury or prejudicial delay to Julio. In particular, Julio filed his default notice before Rytting's answer was due. See NRS 41.0341 (providing that a public officer or employee has forty-five days within which to file an answer); NRCP 12(a)(3) (same). And even though Rytting's answer was filed after the prescribed time period had elapsed, the district court has discretion to permit an untimely answer to be filed. See Opaco Lumber v. Phipps, 75 Nev. 312, 340 P.2d 95 (1959) (noting that, before a default judgment is entered, the court has discretion to deal with an untimely answer as justice may require).

cc: Chief Judge, Second Judicial District  
Hon. Norman C. Robison, Senior Judge  
Julio Cesar Navas  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick/Civil  
Division  
Washoe District Court Clerk