

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAULINE KANE, AS THE SURVIVING  
SPOUSE OF PATRICK J. KANE, SR.;  
GABRIELLE KANE; AILISH KANE;  
AND PATRICK KANE, JR.,

Appellants,

vs.

HARD ROCK HOTEL, INC., A NEVADA  
CORPORATION,

Respondent.

No. 47759

**FILED**

MAR 28 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court's grant of summary judgment in a wrongful death action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Patrick Kane died suddenly on July 18, 2002, of coronary atherosclerosis while a guest at the Hard Rock Hotel, owned by Hard Rock Hotel Inc. Patrick's widow, Pauline, and their three children brought a wrongful death action in Clark County district court alleging that Hard Rock breached its duty as an innkeeper to exercise due care to a patron. Hard Rock moved for summary judgment in district court on the basis that no duty existed, and the district court granted summary judgment on May 15, 2006.

On July 17, 2002, Patrick checked into the Hard Rock following a successful business meeting. Patrick and his co-workers decided to celebrate their success at the hotel. The group dispersed around midnight. Patrick was next seen on a Hard Rock security camera at approximately 2:15 a.m. exiting an elevator and losing his balance, which lead him to rest on a nearby couch. Next, security video captured

Patrick attempting to operate a snowboard simulator video game in the Hard Rock arcade. During the fifteen minutes caught on camera, Patrick struggled to maintain his footing taking several breaks to sit on a nearby stool.

Patrick then left the arcade and, according to testimony by various Hard Rock employees, made his way towards a set of double exit doors. Hard Rock security observed Patrick walking and noticed that he was staggering through the hotel. As Patrick approached the doors he fell backwards and "appeared drunk" to Hard Rock security. Gordon Lee Matzinger, a member of the Hard Rock security team, responded to Patrick and proceeded to ask him a few questions. Shortly after Matzinger responded to Patrick's stumble, he was called on his radio to assist another security officer with an incident in a restroom. Matzinger testified that he left Patrick on the ground and responded to the call.

Matzinger returned to the doors where he had left Patrick and discovered that Patrick had exited the casino and was lying in the bushes outside the door. Another security officer, Christopher Shields, assisted Matzinger in four attempts to lift Patrick up. Each attempt to assist Patrick was unsuccessful, as he fell to the ground each time. Patrick's fall into the bushes resulted in multiple lacerations and left foliage and dirt in his clothes. Matzinger and Shields radioed another officer to bring a wheelchair to assist Patrick in getting to his room.

At this time, Matzinger began asking Patrick a series of questions about where Patrick believed he was, and what his room number and birth date were. Patrick answered all of these questions coherently. Patrick even volunteered that he was leaving the next day to meet his wife and children in the Bahamas for vacation. According to

Matzinger, Patrick stated that he “just wanted to go to his room and sleep” so that he would be able to catch his plane on time. Matzinger also testified that he offered medical assistance to Patrick, which was refused. Security escorted Patrick via wheelchair to his room and testified that, when they left, Patrick stated that he did not need further assistance and shut the door.

Patrick was found dead on the floor by a guest room attendant supervisor at approximately 1:20 p.m. Several guest room attendants had entered and exited the room since 9:15 a.m. and had seen Patrick lying on the floor, but thought he was merely sleeping and likely drunk. The supervisor was summoned that afternoon when guest room attendants reported a guest on the floor past check-out time. When she entered the room, the supervisor promptly called security, who then called 911.

The Clark County Coroner conducted an investigation and an autopsy on Patrick and determined that the cause of death was coronary atherosclerosis, with cocaine and alcohol intoxication as significant contributing factors.

Thereafter, Patrick’s widow, Pauline Kane, filed a complaint alleging negligence leading to wrongful death, respondeat superior, emotional distress, and loss of consortium against the Hard Rock, which was later amended to include the Kane children. Hard Rock answered, alleging several affirmative defenses. The parties conducted discovery, including several expert and lay witness depositions. Kane’s experts asserted that the Hard Rock owed a duty because Patrick was not intoxicated but rather suffered a heart condition, and, in the interest of prudent security policies, Hard Rock should have summoned medical assistance even if Patrick refused. Hard Rock asserted that pursuant to

the medical examiner's report, Patrick's death was primarily due to his ingestion of cocaine and alcohol. Further, Hard Rock asserted that its actions comported with industry standards and, in the interest of public policy, non-medically trained security guards should not be responsible for diagnosing a patron and summoning medical assistance against the patron's wishes.

Subsequently, Hard Rock filed a motion for summary judgment primarily on the basis that it did not breach a duty owed to Patrick. The district court granted Hard Rock's motion after it found that no duty existed because Patrick was not clearly in peril based on Lee v. GNLV Corporation,<sup>1</sup> a case the parties stipulated to be controlling law in this case.

The district court's grant of summary judgment

We review de novo a district court's grant of summary judgment.<sup>2</sup> Summary judgment is proper when the court has examined the record in the light most favorable to the nonmoving party and no genuine issue of material fact remains such that the moving party is entitled to summary judgment as a matter of law.<sup>3</sup> Finally, when reviewing a grant of summary judgment in a negligence case, "[i]f [the]

---

<sup>1</sup>117 Nev. 291, 22 P.3d 209 (2001).

<sup>2</sup>Wood v. Safeway Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>3</sup>Id.

respondent can show that one of the elements [of negligence] is clearly lacking as a matter of law . . . then summary judgment is proper.”<sup>4</sup>

In its grant of summary judgment, the district court relied on several undisputed facts that we find support the district court’s order of summary judgment. First, Patrick was able to respond to Matzinger’s questions. Second, Patrick was offered and refused medical assistance numerous times. Third, Patrick asked to go back to his room to sleep. Fourth, Patrick was able to lift himself out of the wheelchair to enter his room and close the door. We hold that these facts, when taken together, could not have resulted in a jury finding that Patrick was in peril, thereby triggering a duty for Hard Rock to act.

Like the district court, we base our conclusion on Lee v. GNLV Corp. In Lee, we held that a special relationship exists between innkeeper and guest such that the law imposes an affirmative duty upon those in control of the premises to aid a guest in peril.<sup>5</sup> The district court held, and we agree, that a guest must be “more than simply intoxicated in order to be in peril,” and, here, Patrick was not in peril as a matter of law.

Peril is defined as “exposure to the risk of injury, damage or loss” by Black’s Law Dictionary. In Lee, Bobby Lee Sturms, the deceased in the wrongful death action, was intoxicated with a blood alcohol level of 0.32 when he entered the Carson Street Café in the Golden Nugget Hotel

---

<sup>4</sup>Sims v. General Telephone & Electronics, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991) (overruled on other grounds by Tucker v. Action Equipment and Scaffold Co., Inc., 113 Nev. 1349, 951 P.2d 1027 (1997) ).

<sup>5</sup>117 Nev. at 293, 22 P.3d at 210.

to eat.<sup>6</sup> After a few bites, Sturms vomited in his own lap and blacked out.<sup>7</sup> Sturms' dining companion summoned wait staff and security to assist, and when security realized that Sturms' pulse had significantly slowed, staff summoned paramedics.<sup>8</sup> Unfortunately, despite the efforts of the Golden Nugget staff, the paramedics, and University Medical Center personnel, Sturms died from choking to death on food that had become lodged in his airway.<sup>9</sup> In Lee, we held that GNLV Corp. had a duty to render assistance to Sturms under the special relationship between a restaurant and patron.<sup>10</sup> We further held that GNLV's employees acted reasonably because the employees examined and assessed Sturms' condition immediately upon being summoned by Sturms' dining companion.<sup>11</sup> Moreover, the employees continued to monitor his condition after summoning medical assistance when it became clear that his condition was rapidly deteriorating.<sup>12</sup>

This case is factually distinguishable from Lee. Here, Patrick was conscious, able to answer questions, and cognizant enough to refuse medical attention. Because Patrick was coherent, able to communicate,

---

<sup>6</sup>Lee, 117 Nev. at 293, 22 P.2d at 210.

<sup>7</sup>Id.

<sup>8</sup>Id.

<sup>9</sup>Id.

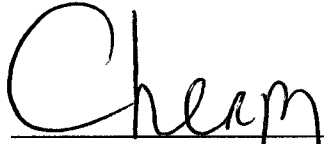
<sup>10</sup>Id. at 299, 22 P.2d at 214.

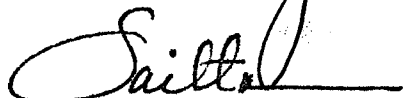
<sup>11</sup>Id.

<sup>12</sup>Lee, 117 Nev. at 299, 22 P.2d at 214.

and refused medical attention on several occasions, we hold that no reasonable jury could have found that Patrick was in peril, and, therefore, the Hard Rock was under no legal duty to render aid to a patron who was not in peril. Therefore, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
William C. Turner, Settlement Judge  
Law Office of Daniel Marks  
Moran & Associates  
Eighth District Court Clerk

MAUPIN, J., concurring in the results reached by the majority.

Maupin, J.  
Maupin