IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBRA D. BRUMBACK AND WILLIAM S. BRUMBACK,
Appellants,
vs.
HARRAH'S ENTERTAINMENT, INC., D/B/A HARRAH'S LAUGHLIN,
Respondent.

No. 49299

FILED

MAR 10 2008

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

ORDER OF AFFIRMANCE

This appeal challenges a district court summary judgment in a negligence action.[1] Eighth Judicial District Court, Clark County; J. Charles Thompson, Judge.

Appellant Debra Brumback allegedly slipped and fell on a black substance on the wet tile outside respondent Harrah's Entertainment, Inc.'s hotel. Consequently, she and her husband, appellant William Brumback, filed a complaint in the district court against Harrah's alleging that Harrah's had negligently maintained its premises. The Brumbacks sought damages for Debra's personal injuries and William's loss of consortium.

Harrah's filed a motion for summary judgment based on Debra's deposition testimony that she did not know what caused her to slip and fall, that, although she speculated that a black substance may

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

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have caused her to slip, she had thrown away her pants with the black streak and the shoes that she had been wearing at the time, and that she knew it had been raining outside and that as a result the tile walkway was wet.

The Brumbacks opposed the motion arguing that Harrah's failed to submit any evidence of how Debra fell, except for concluding that she must have slipped on the wet tile. The Brumbacks also asserted that although Debra knew that it had been raining outside, she was "unaware of the slippery nature of the wet tile." Further, they maintained that the question of whether a particular hazard is obvious is a question for the jury. Finally, they argued that summary judgment was inappropriate because a question of fact remained disputed with regard to the black substance that allegedly appeared on Debra's pants after she fell and whether the substance caused her to slip and fall. The district court granted Harrah's motion and entered judgment on March 6, 2007. The Brumbacks' timely appeal followed.

We review an order granting summary judgment de novo.[2] Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in a light most favorable to the Brumbacks, demonstrate that no genuine issue of material fact remains in dispute and that Harrah's was entitled to judgment as a matter of law.[3] To withstand summary judgment, the Brumbacks could not rely solely on the general

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

[3]Id.

allegations and conclusions set forth in their complaint, but must instead have presented specific facts demonstrating the existence of a genuine factual issue supporting their claims.[4]

Having reviewed the parties' briefs[5] and appendices in light of that standard, we conclude that the district court did not err in granting summary judgment. Here, the district court concluded, as a matter of law, that the Brumbacks' negligence cause of action failed because they could not establish that Harrah's breached any duty with regard to their claim that the premises were negligently maintained and the Brumbacks failed to demonstrate that Harrah's owed any duty with regard to their claim that Harrah's failed to warn Debra of a dangerous condition.[6] First, the Brumbacks could not demonstrate that Harrah's employees created the condition that caused her to slip or that Harrah's employees had constructive notice of its existence.[7] Indeed, although Debra speculated that an unknown black substance may have caused her to slip and fall,

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[4]NRCP 56(e); See also Wood, 121 Nev. at 731, 121 P.3d at 1030-31.

[5]We decline to consider any arguments that the Brumbacks present on appeal that were not first raised in the district court. See Singer v. Chase Manhattan Bank, 111 Nev. 289, 292, 890 P.2d 1305, 1307 (1995).

[6]See Harrington v. Syufy Enters., 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997) (noting that a defendant need only negate one of the elements of a negligence cause of action to establish entitlement to summary judgment).

[7]See Asmussen v. New Golden Hotel Co., 80 Nev. 260, 262, 392 P.2d 49, 50 (1964) (noting that liability may be imposed when the dangerous condition which caused the plaintiff to slip and fall is created by the premises owner or his agent or the owner had actual or constructive knowledge of the danger).

she had thrown away her pants and shoes. Second, the Brumbacks could not demonstrate that Harrah's had a duty to warn Debra, since Debra testified that she knew that the subject tile walkway was wet because it had been raining.[8] Accordingly, because the Brumbacks failed to demonstrate a material factual issue with regard to Harrah's negligence, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Thomas F. Christensen, Settlement Judge
Richard Harris Law Firm
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Eighth District Court Clerk

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[8]See Gott v. Johnson, 79 Nev. 330, 383 P.2d 363 (1963) (indicating that recovery for injuries is barred when the danger that resulted in the injury was as well known to the person injured as it was to the premises owner); Worth v. Reed, 79 Nev. 351, 354, 384 P.2d 1017, 1018 (1963) (noting that a landowner does not breach his duty to use reasonable care by not warning an invitee of an obvious danger); Harrington, 113 Nev. at 249, 931 P.2d at 1382 (explaining that a premises owner has no duty to warn against a known danger and thus cannot be negligent for failing to give such a warning).