

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ARVIS C. AND ANNA L.  
FORREST TRUST,  
Appellant,

vs.

FIDELITY TITLE AGENCY OF  
NEVADA, INC.; AND CHRISTIANNE  
YATES, A/K/A CHRISTIANNE FOLEY,  
Respondents.

No. 48725

THE ARVIS C. AND ANNA L.  
FORREST TRUST,  
Appellant,

vs.

FIDELITY TITLE AGENCY OF  
NEVADA, INC.,  
Respondent

No. 49461

**FILED**

**SEP 28 2009**

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

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court summary judgment order in a tort case involving agency principles and from a post-judgment order awarding attorney fees and costs. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On appeal, appellant the Arvis C. and Anna L. Forrest Trust contends that the district court improperly granted respondent Fidelity Title Agency of Nevada, Inc.'s, motion for summary judgment because there were genuine issues of material fact to be resolved at trial.<sup>1</sup>

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<sup>1</sup>The notice of appeal filed in Docket No. 49461 indicates that the Forrest Trust is appealing the award of attorney fees and costs; however, the Forrest Trust failed to address this issue in its opening brief. Consequently, this court shall consider this issue abandoned. See *continued on next page . . .*

This court reviews orders granting summary judgment de novo. Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992). Summary judgment is appropriate when, after examining the record viewed in a light most favorable to the nonmoving party, no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). An issue of material fact “is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” Id. at 731, 121 P.3d at 1031.

The Forrest Trust contends that summary judgment was inappropriate as to the following issues: (1) agency, (2) negligence, and (3) equitable indemnity. We address each of these arguments in turn, and for the following reasons, conclude that each argument fails. The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

#### Agency relationship

The Forrest Trust first argues that summary judgment was inappropriate because there exists a genuine issue of material fact regarding William Kenneth Rick’s status as an agent for the trust.<sup>2</sup> We disagree.

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Guaranty Nat’l Ins. Co. v. Potter, 112 Nev. 199, 205 n.3, 912 P.2d 267, 272 n.3 (1996). This issue as decided below is affirmed.

<sup>2</sup>The Forrest Trust also contends that the district court erred in excluding the testimony of Iris Corley as hearsay evidence. The Forrest Trust has failed to cite to any authority regarding this claim, and thus, we  
*continued on next page ...*

First, we conclude that Rick was clothed with apparent authority to act for and bind the Forrest Trust. Under Nevada law, “[a]pparent authority is ‘that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence.’” Dixon v. Thatcher, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) (quoting Myers v. Jones, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983)). In other words, once the principal cloaks the agent with the apparent authority to act, the principal is estopped from later denying the actions of the agent. Ellis v. Nelson, 68 Nev. 410, 418, 233 P.2d 1072, 1076 (1951).

In this case, Arvis Forrest testified that he gained confidence in Rick over the course of several years through various business transactions. Eventually, Rick was handling every aspect of the Forrest Trust’s financial dealings. When asked about the transaction giving rise to the instant matter, Arvis explained that Rick was responsible for selecting the title company, delivering the checks, interacting with the

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decline to consider it. See SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984) (declining to consider assignments of error not supported by citation to relevant authority); see also NRAP 28(a)(4) (requiring that appellant provide argument in their opening brief that includes reasons for contentions “with citations to the authorities, statutes and parts of the record relied on”). We note that the Nevada Rules of Appellate Procedure have been significantly amended since the filing of these briefs (effective July 1, 2009) and NRAP 28(a)(8)(A) now includes a variation of the statement quoted from former NRAP 28(a)(4). However, NRAP 28(a)(4) is properly applied in this instance.

title company, and generally handling the transaction through the close of escrow. In light of Arvis's testimony and conduct during the transaction, we conclude that the district court was correct in finding that the Forrest Trust cloaked Rick with the apparent authority to act on its behalf.

Second, we conclude that Fidelity's reliance on Rick's status as an agent of the Forrest Trust was reasonable. Under principles of agency, "[a]pparent authority is, in essence, an application of equitable estoppel, of which reasonable reliance is a necessary element." Great American Ins. v. General Builders, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).

In its summary judgment order, the district court failed to address whether Fidelity's reliance was reasonable. According to the Forrest Trust, the district court's silence warrants reversal by this court. We disagree.

Christianne Yates, Fidelity's escrow officer, testified in her deposition that she received all of the instructions regarding the Forrest Trust account from Rick. Yates further testified that Arvis explained to her that "he doesn't like to handle anything; that everything always went through Ken Rick." In light of these facts, we conclude that Fidelity's reliance on Rick, as the agent of the Forrest Trust, was reasonable.

#### Negligence claims

The Forrest Trust next contends that summary judgment was inappropriate with respect to its negligence claims because Fidelity breached its duty to exercise due care in orchestrating the transaction by failing to record the assignments. We disagree.

Under Nevada law, in order to prove negligence, a plaintiff must demonstrate, in part, that the defendant had a duty to exercise due care and that there was a subsequent breach of that duty. See Scialabba v. Brandise Constr. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

“Whether a defendant owes a plaintiff a duty of care is a question of law.”  
Id.

Here, Rick communicated a series of escrow instructions to Yates. However, Rick failed to instruct Yates to record the assignments. Accordingly, we conclude that neither Yates nor Fidelity owed a duty to Forrest Trust to record the assignments.

Equitable indemnity

Third, and finally, the Forrest Trust contends that the district court erred when it shifted liability from Fidelity to the Forrest Trust under a theory of equitable indemnity. We disagree.

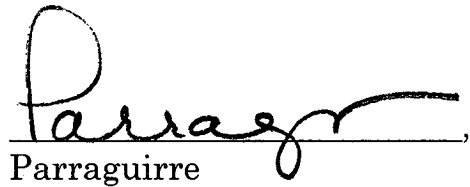
In the underlying case, the Nevada Society for the Prevention of Cruelty to Animals (NSPCA) filed a tort action against Fidelity. Fidelity filed its answer and simultaneously filed cross-claims and third-party claims against the Forrest Trust. The NSPCA’s claims against Fidelity were resolved when Fidelity entered into a settlement agreement with the NSPCA.

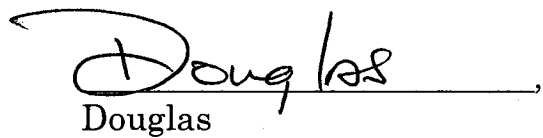
Subsequently, Fidelity filed a motion for summary judgment on its third-party claims against the Forrest Trust. In its motion, Fidelity argued that the Forrest Trust was equitably obliged to indemnify Fidelity for the settlement that was paid to the NSPCA. The Forrest Trust filed a response to Fidelity’s summary judgment motion, but failed to address the equitable indemnity claim in the present appeal.

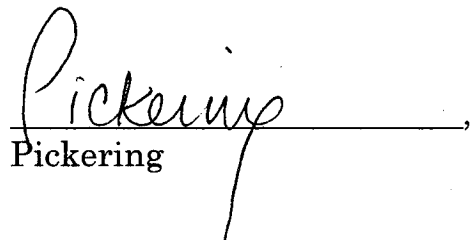
Generally, failure to raise an argument in the district court proceedings precludes a party from presenting the argument on appeal. Nye County v. Washoe Medical Center, 108 Nev. 490, 493, 835 P.2d 780, 782 (1992). We therefore determine that the Forrest Trust has waived its opportunity to present this issue on appeal.

Based on the foregoing discussion and after conducting de novo review of the issues, we conclude that Fidelity was entitled to judgment as a matter of law because there are no genuine issues of material fact. The district court properly granted summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Eighth Judicial District Court Dept. 18, District Judge  
Eighth Judicial District Court Dept. 23, District Judge  
Leonard I. Gang, Settlement Judge  
Roger P. Croteau & Associates, Ltd.  
David T. Spurlock Jr.  
Gerrard Cox & Larsen  
Woods Erickson Whitaker Miles & Maurice, LLP  
Eighth District Court Clerk