

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS PAVING CORPORATION,  
A NEVADA CORPORATION,  
Appellant,  
vs.  
NEVADA POWER COMPANY, A  
NEVADA CORPORATION,  
Respondent.

No. 49766

**FILED**

JAN 27 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a negligence action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Las Vegas Paving Corporation (LVPC) was engaged in a construction project to re-pave a section of roadway in Henderson, NV. Per the explicit statutory duty of NRS 455.120, LVPC contacted the "call before you dig" operators to have the underground utility lines identified and marked. Respondent Nevada Power Company's (Nevada Power) subsurface lines were identified and marked but, in accordance with the statute, the depth was not determined. To determine the depth, LVPC dug test holes at regular intervals and discovered that Nevada Power's cable line was buried at least 24 inches below the surface. However, on one occasion when a LVPC employee was driving a stake into the ground, at a depth of 8-12 inches below the surface, the employee struck Nevada Power's cable causing damage and power outage to the area.

Nevada Power then brought an action in district court against LVPC to recover the \$18,561.45 cost of replacing the damaged cable on a theory of negligence under NRS 704.805.<sup>1</sup> LVPC admitted to striking Nevada Power's cable, but denied that it struck the cable negligently. After discovery, Nevada Power moved for summary judgment, which the district court granted. LVPC now appeals the district court's grant of summary judgment.

### STANDARD OF REVIEW

Orders granting summary judgment are reviewed de novo.<sup>2</sup> Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.<sup>3</sup> Thus, we review motions for summary judgment, the evidence, and all reasonable inferences drawn from it in a light most favorable to the nonmoving party.<sup>4</sup>

"The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant."<sup>5</sup> A genuine factual dispute exists when a rational trier of fact could return a verdict for the nonmoving party based on the presented

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<sup>1</sup>Nevada Power first sent a bill to recover the costs to LVPC directly, which LVPC refused to pay.

<sup>2</sup>Yeager v. Harrah's Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094 (1995).

<sup>3</sup>NRCP 56(c); see Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>4</sup>Wood, 121 Nev. at 729, 121 P.3d at 1029.

<sup>5</sup>Id. at 731, 121 P.3d at 1031.

evidence.<sup>6</sup> We have held that “[w]hen a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.”<sup>7</sup>

### DISCUSSION

LVPC argues that the district court erred in granting summary judgment because it applied the wrong standard of care when it applied the “excavation” duty under NRS 455.137 and NAC 455.150. Furthermore, LVPC contends that even if this court agrees that LVPC was engaged in excavation, LVPC substantially complied with the excavation statutes, which precludes a finding of negligence. We disagree.

Here, the district court did not explicitly reference NRS 455.137 or NAC 455.150 in its order granting summary judgment. Rather, the district court concluded that LVPC was negligent as a matter of law for breaching its “duty to proceed in a careful and prudent manner when working near Nevada Power’s underground utilities.” The parties do not dispute the facts in this case, including what methods LVPC was engaged in when it damaged Nevada Power’s cable. Thus, the district court correctly focused on whether LVPC negligently or intentionally damaged Nevada Power’s underground utility, after LVPC admitted that it had damaged the cable when its employee drove a stake into the ground in an area known to have underground cable without checking the cable’s

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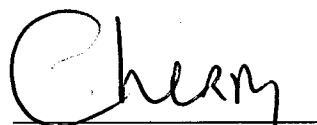
<sup>6</sup>Id. at 729, 121 P.3d at 1029.


<sup>7</sup>Id. at 731, 121 P.3d at 1030-31 (quoting Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)).

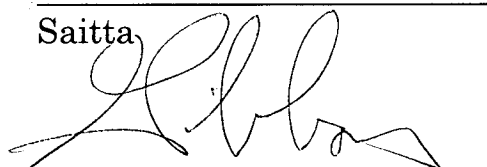
depth at that location. LVPC set forth no specific facts demonstrating a genuine issue for trial. Rather, the district court properly granted summary judgment based on these undisputed facts, which led the district court to conclude that LVPC negligently damaged Nevada Power's cable as a matter of law. Consequently, we determine that the district court did not err in granting Nevada Power's motion for summary judgment.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Susan Johnson, District Judge  
Eugene Osko, Settlement Judge  
Barker Washburn  
Morris Pickering & Peterson/Las Vegas  
Eighth District Court Clerk