IN THE SUPREME COURT OF THE STATE OF NEVADA

CARYN KINCAID AND MARK KINCAID,
Appellants,
vs.
ALLAN ROSE AND DEBBIE ROSE,
Respondents.

No. 49913

FILED

DEC 24 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; David Wall, Judge.[1]

This case arises from injuries allegedly suffered by appellant Caryn Kincaid when she fell while walking from her car to the front door of the home that appellants were leasing from respondents. The ground where Caryn fell had been rototilled by a neighbor approximately three months prior to the fall and the yard had not been fixed by the time of the accident. Appellants brought negligence, premise liability, and loss of consortium claims.

Respondents moved for summary judgment in the district court based on a clause in the lease agreement that states that the lessees (the Kincaids) assumed responsibility for repairs and landscaping in exchange for a lower rent payment and no security deposit. Respondents also argued that appellants failed to establish an issue of material fact

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

regarding any negligence on the part of respondents that would make respondents liable under appellants' claims for recovery. Appellants opposed the summary judgment motion, arguing that other provisions in the agreement required respondents to repair major damage and oral statements made by respondent Debbie Rose that the neighbor maintained the portion of yard at issue made the agreement ambiguous, and thus, there was a question of material fact as to who was responsible for repairing the yard. Additionally, appellants argued that there were questions whether respondents were negligent in failing to repair the yard. The district court granted summary judgment in favor of respondents based on the language in the lease agreement that appellants were responsible for repairs and landscaping. Appellants appealed the summary judgment order.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[2] Once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment.[3] This court reviews an order granting summary judgment de novo.[4]

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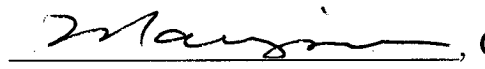
[2]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[3]Id. at 731, 121 P.3d at 1030-31; NRCP 56(e).

[4]Wood, 121 Nev. at 729, 121 P.3d at 1029.

We conclude that summary judgment was properly granted. Appellants failed to meet their burden of establishing a genuine issue of material fact to support their tort claims against respondents.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]



, C.J.
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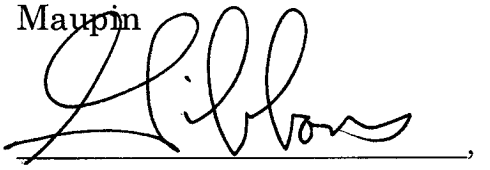

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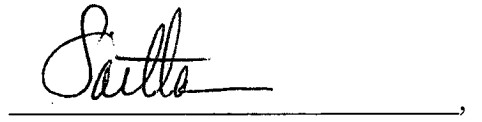
Gibbons



, J.
Saitta

cc: Hon. David Wall, District Judge
Larry J. Cohen, Settlement Judge
Wishengrad Law Offices, LLC
Shreve & Associates, P.C.
Eighth District Court Clerk

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[5]In addition to failing to establish a material issue of fact regarding respondents' negligence, the lease agreement's clause stating that appellants assumed liability for repairs and landscaping further supports summary judgment in favor of respondents.

[6]See Hannam v. Brown, 114 Nev. 350, 357, 956 P.2d 794, 799 (1998) (quoting Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)) (stating that we will affirm the district court "'if it reached the correct result, albeit for different reasons'").