

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ALLEN SMITH,
Appellant,

vs.

DEBRA CASCI; KAREN MESKINMEN;
SADIE TATE-CROWDER; RONALD
LAXTON; AND WASHOE HEALTH
SYSTEMS, INC.,
Respondents.

No. 50107

FILED

APR 18 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a torts action. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant John Allen Smith, an inmate at Lovelock Correctional Facility, underwent open heart surgery at Washoe Medical Center. According to Smith, upon his arrival at Washoe Medical Center, respondents failed to provide him with specific admissions forms required by NRS Chapter 449. As a result of their failure to provide the documents, Smith instituted a negligence action against respondents, alleging that he was not informed of his right to refuse medical treatment, that, as a result, he was subjected to gross medical malpractice, physical and mental abuse by hospital staff and physicians, and that he was resuscitated during surgery against his religious beliefs. Smith further alleges that he now suffers from various complications arising from the multiple surgeries that he was forced to endure.

Smith filed a motion for summary judgment, alleging that he was entitled to summary judgment because respondents failed to timely respond to his requests for admissions. Respondents opposed his motion and likewise moved for summary judgment, which Smith opposed. The district court resolved the motions in a single order, denying Smith's motion and granting summary judgment to respondents. With respect to Smith's motion, the district court concluded that respondents' answers to Smith's requests for admissions would not be deemed admitted because respondents timely mailed their answers to Smith's last known address and had no way of knowing that their mail would not be delivered, there was no prejudice suffered by Smith since the trial date had been moved, and even if deemed admitted, Smith had not asserted a cause of action for which relief could be granted.

The district court granted respondents' summary judgment motion after determining that no genuine issues of material fact existed and that Smith did not provide evidence that any damages he allegedly suffered proximately resulted from respondents' actions. Smith's timely appeal followed.

We review summary judgment orders de novo.¹ Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to the non-moving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law.² To withstand summary

¹Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

²Id.

judgment, the opponent cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his claims.³

Having reviewed the record, the parties' appellate arguments, and respondents' appendix, in light of those standards, we conclude that the district court did not err in denying summary judgment to Smith and in granting summary judgment to respondents.⁴ First, Smith's summary judgment motion was properly denied because the district court has discretion in deciding whether to accept as true untimely responses to requests for admission.⁵ Here, the district court determined that the responses were timely mailed, that the address used by respondents had been successful in the past, and they had no reason to know that the mail

³NRCP 56(e); see also Wood, 121 Nev. at 730-31, 121 P.3d at 1030-31.

⁴See 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 the propriety of summary judgment).

We also conclude that the district court did not err in granting summary judgment to respondent Ronald Laxton, as Smith's complaint contained no allegations against him and Smith failed to oppose that portion of the summary judgment motion relating to Laxton. See DCR 13(3) (an opposing party's failure to serve and file a written opposition may be construed as an admission that the motion is meritorious and consent to granting the same).

⁵Woods v. Label Investment Corp., 107 Nev. 419, 425, 812 P.2d 1293, 1297 (1991), disapproved on other grounds in Hanneman v. Downer, 110 Nev. 167, 871 P.2d 279 (1994).

would be returned as undeliverable. Accordingly, the district court did not abuse its discretion in refusing to treat Smith's requests as admitted and it properly denied Smith's summary judgment motion.

Second, the district court properly granted respondents' summary judgment motion because Smith cannot maintain his negligence cause of action when he failed to show the existence of any factual dispute as to whether the respondents' actions proximately caused his alleged injuries.⁶ Although Smith's deposition testimony reveals that he may be suffering from various health complications, he submitted no evidence indicating that his ailments could have been proximately caused by respondents' inactions.⁷ Accordingly, we

⁶Proximate cause is defined as any cause, which without an intervening cause, produces plaintiff's injury. Mahan v. Hafen, 76 Nev. 220, 225, 351 P.2d 617, 620 (1960).

⁷See Wood, 121 Nev. at 732, 121 P.3d at 1031 (noting that the non-moving party cannot rely on speculation or conjecture to defeat a summary judgment motion); see also Yeager v. Harrah's Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094-95 (1995) (noting that general allegations supported with conclusory statements fail to create issues of fact).

Although appellant attached a copy of his deposition transcript to his opposition motion, we note that while portions of his deposition testimony might be admissible, any hearsay statements contained within the deposition are generally not admissible, and therefore neither we nor the district court need consider those statements in determining respondents' summary judgment motion. Schneider v. Continental Assurance Co., 110 Nev. 1270, 1273, 885 P.2d 572, 575 (1994) (noting that evidence submitted with an opposition to a motion for summary judgment must be admissible); see also Deutscher v. State, 95 Nev. 669, 683-84, 601 P.2d 407, 416-17 (1979) (noting that a statement is hearsay and inadmissible if it is a statement that is offered to prove the truth of the matter asserted and made by the witness outside of court).

ORDER the judgment of the district court AFFIRMED.⁸

Maupin, J.
Maupin

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Hon. Jerome Polaha, District Judge
John Allen Smith
Maupin, Cox & LeGoy
Washoe District Court Clerk

⁸We also conclude that the portion of the district court's order denying appellant's motion for leave to withdraw an allegation of his complaint was proper, in light of the district court properly granting summary judgment to respondents.

Having considered the other issues that Smith appears to have raised, including that the district court improperly construed his complaint as a medical malpractice action and that respondents purportedly failed to provide him with copies of his Washoe Medical Center records in response to a discovery request, we conclude that these contentions lack merit and do not warrant reversal of the district court's order.