

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM SCHAEFFER, II,  
Appellant,  
vs.  
JOHN JAMES CARR; AND AIRLINE  
LIMOUSINE, A NEVADA  
CORPORATION,  
Respondents.

No. 50201

**FILED**

OCT 02 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingersoll*  
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting summary judgment in a personal injury action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

On August 4, 2005, appellant William Schaeffer filed a complaint, alleging negligence, respondeat superior, and negligent entrustment against respondents John Carr and Airline Limousine Corporation. Schaeffer's causes of action stemmed from a motor vehicle accident in which Carr was driving a bus owned by Airline Limousine.

On March 13, 2007, respondents filed a motion for summary judgment under NRCP 56(c) and attached a copy of respondents' expert's November 13, 2006, report. Schaeffer opposed the motion. Following a hearing, the district court entered a preliminary decision indicating its intention to grant the motion for summary judgment. On May 9, 2007, Schaeffer filed a motion for reconsideration. Carr and Airline Limousine opposed Schaeffer's request for reconsideration. Following a hearing on the motion for reconsideration, in an August 17, 2007, order, the district court entered its amended findings of fact, conclusions of law, and

reaffirmed its decision granting summary judgment in favor of Carr and Airline Limousine. Schaeffer appeals.<sup>1</sup>

On appeal, Schaeffer argues that the district court erred in granting summary judgment because Carr and Airline Limousine did not meet their burden under NRCP 56(c) of demonstrating the lack of a genuine issue of material fact and in prohibiting Schaeffer from relying on the respondents' expert's report. Having reviewed the record, we agree that respondents did not meet their burden under NRCP 56(c) and, therefore, the district court erred in granting summary judgment.<sup>2</sup>

Summary judgment is appropriate when the pleadings and other evidence on file demonstrate that no genuine issue of material fact exists and that as a matter of law the moving party is entitled to judgment.<sup>3</sup> "[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the [record] which it believes demonstrate the absence of a genuine issue of material fact."<sup>4</sup> If the moving party satisfies

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<sup>1</sup>Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this appeal.

<sup>2</sup>Because respondents failed to meet their initial burden of demonstrating an absence of genuine issues of material fact, we need not reach Schaeffer's argument regarding his use of respondents' expert's report, as Schaeffer had no duty to respond on the merits.

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

<sup>4</sup>Billingsley v. Stockmen's Hotel, 111 Nev. 1033, 1037, 901 P.2d 141, 144 (1995) (quoting Clauson v. Lloyd, 103 Nev. 432, 435 n.3, 743 P.2d 631, 633 n.3 (1987) (quoting Celotex Corp. v. Cartrett, 477 U.S. 317 (1986))).

his burden and the motion for summary judgment is supported as required by NRCP 56(c), the nonmoving party may not rest upon general allegations and conclusions but must set forth specific facts demonstrating the existence of a genuine issue for trial.<sup>5</sup> “Otherwise, the [nonmoving] party has no duty to respond on the merits and summary judgment may not be entered against him.”<sup>6</sup>

On appeal, this court reviews the record de novo, without deference to the findings of the district court, in order to evaluate the district court’s determination that there are no genuine issues of material fact.<sup>7</sup>

Schaeffer asserts that respondents’ expert’s report, which was attached to respondents’ motion for summary judgment, contains information which establishes the existence of genuine issues of material fact regarding possible negligence by Carr and Airline Limousine Corporation and, therefore, precludes summary judgment. Respondents argue that the expert’s report does not establish issues of material fact regarding negligence and that, regardless of the report’s content, appellant cannot rely on their expert’s report in his opposition to their summary judgment motion.

In order for Carr and Airline Limousine to prevail on their motion for summary judgment, they were required to demonstrate the

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<sup>5</sup>Wood, 121 Nev. at 731, 121 P.3d at 1030-31.

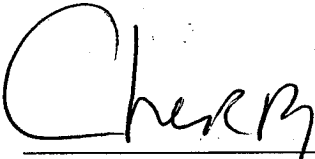
<sup>6</sup>Maine v. Stewart, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993) (citing Clauson, 103 Nev. at 435, 743 P.2d at 633).


<sup>7</sup>Wood, 121 Nev. at 729, 121 P.3d at 1029.

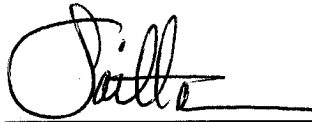
absence of material factual disputes regarding their alleged negligence from the record, affidavits, or other evidence.<sup>8</sup> "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party."<sup>9</sup> Having read respondents' expert's report, we agree with appellant that the report establishes the existence of a genuine issue of material fact regarding negligence by respondents.

Respondents, as the party moving for summary judgment, had the burden of establishing the nonexistence of any genuine issue of material fact. As respondents failed to meet this burden, we

REVERSE the district court's order granting summary judgment.

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

  
\_\_\_\_\_, J.  
Maupin

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

cc: Hon. Mark R. Denton, District Judge  
William F. Buchanan, Settlement Judge  
Law Offices of Leslie Mark Stovall  
Hutchison & Steffen, Ltd.  
Eighth District Court Clerk

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<sup>8</sup>Id. at 731, 121 P.3d at 1031.

<sup>9</sup>Id.