

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN BLANCHARD,
Appellant,
vs.
CIRCUS CASINOS, INC., D/B/A
CIRCUS CIRCUS RENO,
Respondent.

No. 51029

FILED

NOV 04 2008

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from a district court summary judgment in a tort action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Alan Blanchard instituted the underlying district court action against respondent Circus Casinos, Inc., d/b/a Circus Circus Reno, alleging that Circus Circus security employees falsely imprisoned and defamed Blanchard when they detained him regarding his alleged suspicious behavior around the slot machines. Circus Circus moved the district court for summary judgment, which Blanchard opposed. The district court granted summary judgment in favor of Circus Circus. This appeal followed. As directed, Circus Circus filed a response. Blanchard was permitted to file a reply.

False Imprisonment

Blanchard alleges that the district court improperly granted summary judgment in favor of Circus Circus on his false imprisonment

claim because Blanchard asserts that he did not “silver mine”¹ or credit claim as Circus Circus alleged, and thus, his detention was improper.

This court reviews summary judgment orders de novo.² Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to the nonmoving 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.³ To withstand summary judgment, the nonmoving party 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.⁴

Generally, a defendant may be subject to liability for false imprisonment when the defendant intends to and does confine an individual within fixed boundaries and the individual is conscious of and harmed by it.⁵ But under NRS 465.101, a gaming establishment’s officer, employee, or licensee is entitled to civil immunity for the questioning,

¹Circus Circus explains that silver mining or credit claiming generally occurs when a casino patron walks through a slot machine gaming area looking for slot machines with unclaimed credits and the patron does not play any slot machine games.

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

³Id. (quotations omitted).

⁴NRCP 56(e); see also Wood, 121 Nev. at 730-31, 121 P.3d at 1030-31.

⁵Hernandez v. City of Reno, 97 Nev. 429, 433, 634 P.2d 668, 671 (1981).

taking into custody, or detention of an individual when there is probable cause to believe that the individual has violated a provision of NRS Chapter 465. Probable cause exists when facts or circumstances within an officer's knowledge are sufficient to warrant a reasonable belief that a suspect has committed a crime.⁶ It does not, however, require absolute certainty.⁷

Having reviewed the parties' appellate arguments and the district court record on appeal in light of these principles, we conclude that the district court properly granted summary judgment in favor of Circus Circus. In particular, Circus Circus's security personnel had probable cause to suspect that Blanchard had engaged in silver mining based upon information provided by other Circus Circus employees. The district court record shows that two Circus Circus employees reported to the security personnel that Blanchard was observed silver mining or credit claiming. Thus, under NRS 465.101, Circus Circus's security personnel had probable cause to detain Blanchard. Circus Circus is thus entitled to civil immunity.

To the extent that Blanchard argues that his detention was unreasonably long, that argument lacks merit because the delay, if any, was a result of Blanchard's initial refusal to provide his identification to security personnel and his subsequent request to confront his accuser.

⁶State v. McKellips, 118 Nev. 465, 472, 49 P.3d 655, 660 (2002).

⁷Marschall v. City of Carson, 86 Nev. 107, 113-14, 464 P.2d 494, 499 (1970).

Accordingly, summary judgment was properly granted on Blanchard's false imprisonment claim.

Defamation

With regard to Blanchard's defamation claim, Circus Circus's summary judgment was based on its contention that no publication of any defamatory statement occurred. On appeal, Blanchard contends that summary judgment on his defamation claim was improper because Circus Circus's security personnel published to other Circus Circus employees and casino patrons that Blanchard had silver mined or credit claimed.

The party moving for summary judgment always bears the initial burden of demonstrating to the district court, by identifying portions of the record, that there is an absence of a genuine issue of material fact.⁸ When the moving party satisfies this burden, the nonmoving party may not rest upon general allegations and conclusions to create a material issue of fact.⁹ Otherwise, the nonmoving party is not required to respond to the merits and summary judgment may not be entered against him.¹⁰

A plaintiff alleging defamation must demonstrate "(1) a false and defamatory statement by [the] defendant concerning the plaintiff; (2)

⁸Billingsley v. Stockmen's Hotel, 111 Nev. 1033, 1037, 901 P.2d 141, 144 (1995).

⁹Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030-31; see also Yeager v. Harrah's Club, Inc., 111 Nev. 830, 833, 897 P.2d 1093, 1094-95 (1995).

¹⁰Maine v. Stewart, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993).

an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.”¹¹

Publication occurs when the statement is communicated to a third person.¹² A defamatory statement made between employees, however, does not constitute publication.¹³ Normally, publication to a third party is proven by direct evidence that the third party heard the defamatory statement.¹⁴ Circumstantial evidence may be used to prove that the defamatory statement was communicated to a third person when evidence is presented “regarding the tone in which the defamatory statement was made or the proximity of third parties.”¹⁵

Having reviewed the record on appeal and the parties’ appellate arguments, we determine that the district court erred in part when it granted summary judgment in favor of Circus Circus on Blanchard’s defamation claim. The district court properly granted summary judgment regarding statements communicated between Circus Circus employees, because those communications do not constitute publication as a matter of law.¹⁶ But Blanchard’s complaint asserts that

¹¹Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (internal quotation and citation omitted).

¹²M & R Investment Co. v. Mandarino, 103 Nev. 711, 715, 748 P.2d 488, 491 (1987).

¹³Id.

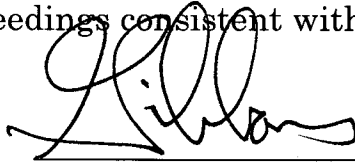
¹⁴Id.


¹⁵Id. at 716.


¹⁶See id. at 715.

Circus Circus's security personnel's alleged defamatory statements were made in the presence of third persons, and Circus Circus did not meet its burden of supporting its summary judgment motion with admissible evidence refuting this allegation. Thus, the district court improperly granted summary judgment in favor of Circus Circus on this claim as it relates to purportedly defamatory statements allegedly published to third persons. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁷


_____, C.J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre

¹⁷We remind appellant that on appeal this court may not consider matters outside of the district court's record. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981). Accordingly, the documents attached to appellant's opening brief have not been considered in our resolution of the appeal, unless they also appear in the record.

We deny appellant's July 24, 2008, motion for an enlargement of time to bring his case to trial because appellant is requesting relief for a future potential problem that has not been addressed in the district court and it is not ripe for our consideration at this time. See Resnick v. Nevada Gaming Commission, 104 Nev. 60, 66, 752 P.2d 229, 233 (1988) (“[L]itigated matters must present an existing controversy, not merely the prospect of a future problem.”).

cc: Hon. Steven R. Kosach, District Judge
Alan Blanchard
Rands, South, Gardner & Hetey
Washoe District Court Clerk