

IN THE SUPREME COURT OF THE STATE OF NEVADA

DREW NEWMAN,
Appellant,
vs.
STEVEN EDWARD RUBIN, M.D. AND
PAIGE NEWMAN,
Respondents.

No. 51404

FILED

DEC 14 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On December 13, 2004, appellant Drew Newman filed a complaint against respondent Dr. Steven Edward Rubin, alleging, among other things, breach of a confidential relationship and civil conspiracy. On February 9, 2005, Drew filed a first amended complaint naming his ex-wife, respondent Paige Newman, as a defendant along with Dr. Rubin. On August 29, 2006, Drew filed a second amended complaint adding the claims of breach of fiduciary duty, false light invasion of privacy, and false imprisonment against Dr. Rubin. All claims asserted by Drew in his complaints stem from a series of incidents that took place during and after he was hospitalized following a suicide attempt.

Dr. Rubin and Paige both filed motions for summary judgment that Drew opposed. Subsequently, Drew filed a motion to postpone the district court's ruling on summary judgment pursuant to NRCP 56(f). The district court denied Drew's motion to postpone ruling on summary

judgment and granted both Dr. Rubin's and Paige's motions for summary judgment. This appeal follows.¹

Newman argues that summary judgment was not appropriate because genuine issues of material fact exist as to: 1) whether Dr. Rubin breached patient confidentiality with respect to Drew, 2) Drew's claim for false imprisonment and 3) whether Dr. Rubin and Paige engaged in an actionable civil conspiracy.² We conclude that the district court did not err in granting summary judgment to Dr. Rubin and Paige on all three of Drew's claims.

Standard of review

We review a district court order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). 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. Id.; NRCP 56(c). When we review motions for summary judgment, we view the evidence, and all reasonable inferences drawn from it, in a light most favorable to the nonmoving party. Wood, 121 Nev. at 729, 121 P.3d at 1029. Whether a factual dispute is material and will preclude summary judgment is controlled by substantive law. Id.; NRCP 56(f).

¹The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

²We note that the district court also granted summary judgment to Dr. Rubin on the Drew's claims of intentional infliction of emotional distress, breach of contract and breach of the implied covenant of good faith and fair dealing. As Drew does not argue that the district court erred in granting summary judgment on his additional claims, we do not address them.

A genuine factual dispute exists when a rational trier of fact could return a verdict for the nonmoving party based on the presented evidence. Wood, 121 Nev. at 729, 121 P.3d at 1029. 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.” 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)).

Breach of doctor-patient confidentiality

Drew argues that the district erred in granting Dr. Rubin’s motion for summary judgment because genuine issues of material fact exist regarding whether Dr. Rubin breached doctor-patient confidentiality. Specifically, Drew contends that Dr. Rubin breached doctor-patient confidentiality by revealing details of Drew’s hospitalization to Paige, the Reno Police Department, and the hearing master who presided before the matter of Paige’s protection order. We disagree because we conclude that Drew has failed to produce any evidence to show that Dr. Rubin did not act to prevent immediate physical harm to Paige in divulging Drew’s medical information.

NRS 449.720(1)(d) states that a patient of a medical facility has the right to confidentiality regarding the program of that patient’s medical treatment. However, a doctor is allowed to break the confidentiality and divulge a patient’s medical information “[i]f there is an immediate threat that the patient will harm himself or other persons.” NRS 49.213(5).

We conclude that the evidence produced by Drew does not show that Dr. Rubin breached his duty of confidentiality to Drew by

divulging his medical information to Paige, the Reno Police Department, or the hearing master at the family court. Specifically, Dr. Rubin was reacting to what he believed to be a credible threat on Paige's life and Drew has produced no evidence to show that Dr. Rubin did not actually believe Drew posed a credible threat to Paige. As such, we conclude that the district court did not err in granting Dr. Rubin's motion for summary judgment on this issue.

False imprisonment

Drew argues that the district erred in granting Dr. Rubin's motion for summary judgment because genuine issues of material fact exist regarding his false imprisonment claim against Dr. Rubin. We disagree because we conclude that Drew presented no actual evidence beyond his general allegation to support his claim.

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. Hernandez v. City of Reno, 97 Nev. 429, 433, 634 P.2d 668, 671 (1981). To prevail on a claim of false imprisonment the plaintiff must show that the defendant: (1) acted intending to confine the plaintiff within boundaries fixed by the actor, (2) acted directly or indirectly to result in such a confinement of the plaintiff, and (3) the plaintiff was conscious of the confinement or is harmed by it. Id. (citing Restatement (Second) of Torts § 35 (1965)).

We conclude that, based on the evidence provided by Drew to support his false imprisonment claim, the district court did not err in granting Dr. Rubin's motion for summary judgment. Specifically, the only evidence provided to the district court by Drew to support his false imprisonment claim was Drew's own affidavit that he believed Dr. Rubin

had intentionally tried to keep him in the hospital to protect Paige. Without more than Drew's accusation, we conclude that Drew failed to present credible facts to support his claim of false imprisonment as his statement, by itself, is nothing more than a general allegation that is not enough to survive a motion for summary judgment. See Wood, 121 Nev. at 731, 121 P.3d at 1030-31 (citing Pegasus, 118 Nev. at 713-14, 57 P.3d at 87). Therefore, we conclude that the district court did not err in granting Dr. Rubin's motion for summary judgment on Drew's false imprisonment claim.

Civil conspiracy

Drew argues that the district erred in granting Dr. Rubin's motion for summary judgment because genuine issues of material fact exist regarding his civil conspiracy claim against Dr. Rubin and Paige. We disagree because we conclude that Drew failed to produce evidence to support his allegation that a conspiracy was entered into by Dr. Rubin and Paige.

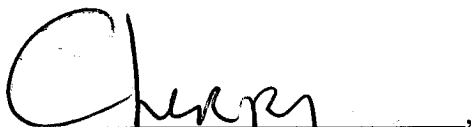
"An actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage." Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

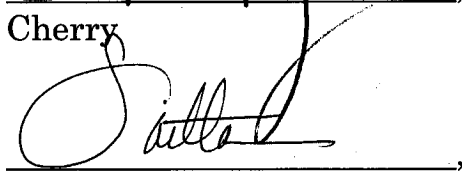
We conclude that Drew failed to produce any evidence to support his allegation that Dr. Rubin and Paige had worked in concert to cause Drew harm. Specifically, the evidence presented by Drew to support his civil conspiracy claims against Dr. Rubin and Paige are all general allegations and conclusions that are insufficient to defeat a motion for summary judgment. Thus, we conclude that the district court did not err

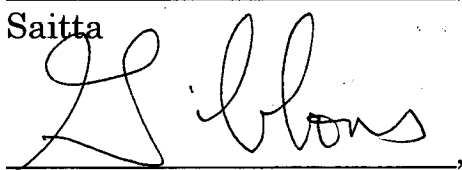
in granting Dr. Rubin's and Paige's motions for summary judgment on Drew's civil conspiracy claims.

In light of the foregoing discussion, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Carolyn Worrell, Settlement Judge
Richard F. Cornell
Lemons Grundy & Eisenberg
Lynn G. Pierce
Washoe District Court Clerk