

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSAMA HAIKAL, M.D., LTD., D/B/A
DIGESTIVE DISEASE SPECIALISTS, A
NEVADA PROFESSIONAL
CORPORATION,
Appellant,
vs.
GAZDA & TADAYON, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondent.

No. 52396

FILED

APR 13 2010

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a defamation case. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In 2008, respondent Gazda & Tadayon, LLC (Gazda), placed two advertisements concerning appellant Osama Haikal, M.D., Ltd., d.b.a. Digestive Disease Specialists (DDS). The advertisements were run in the Las Vegas Review Journal and the Pahrump Valley News. Due to the nature of the advertisements, DDS sued Gazda for libel per se, deceptive trade practices, and intentional interference with economic advantage.

After DDS filed its complaint, Gazda agreed to print a retraction, and the district court entered a permanent injunction directing Gazda to do so and to refrain from referencing DDS in future advertisements. Subsequently, Gazda sought to have the injunction set aside and moved for summary judgment. The district court set aside the injunction and granted Gazda's summary judgment motion on all claims. DDS appealed.

On appeal, DDS assigns several errors. DDS argues that the district court erred in granting summary judgment. It also asserts that

the district court erred in setting aside the permanent injunction order. Lastly, it contends that the district court erred in finding the State of Nevada and the Las Vegas Sun to be indispensable parties.

We conclude that there are genuine issues of fact in dispute and therefore we reverse and remand the district court's order granting summary judgment. We also direct the district court to review the case on remand pursuant to our opinion in Clark County Sch. Dist. v. Virtual Education, 125 Nev. ___, 213 P.3d 496 (2009).

Standard of review

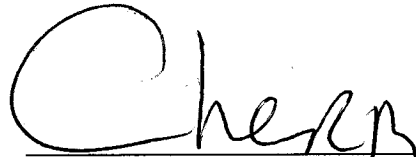
We review "a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting NRCP 56(c)). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Id. at 731, 121 P.3d at 1031. In reviewing a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id. at 729, 121 P.3d at 1029.


Summary judgment was premature as genuine issues of material fact remain

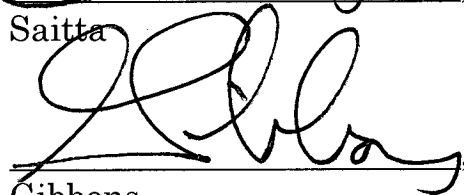
DDS argues that the district court erred when it granted summary judgment. Specifically, it asserts that Gazda's motion for summary judgment was supported by inadmissible evidence and that genuine issues of fact remain as to whether Gazda's advertisements were defamatory.

We conclude that summary judgment was premature because genuine issues of fact remain. These issues include whether the exhibits attached to Gazda's motion for summary judgment and its reply are admissible in evidence. Genuine issues of fact also remain as to whether Gazda's advertisements were defamatory. Because summary judgment was improper, we need not address DDS's remaining contentions at this time. Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Lester H. Berkson, Settlement Judge
Bailey Kennedy
G. Dallas Horton & Associates
Eighth District Court Clerk