IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LYNN DAVIS,
Appellant,
  vs.
THOMAS EITEL; JAKE EITEL; AND
TIM FARNHAM,
Respondents.

No. 52982

FILED

JUL 2 4 2009

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a tort action. Third Judicial District Court, Lyon County; David A. Huff, Judge.

This case arises out of an attack on appellant by respondents Jake Eitel and Tim Farnham on property that Jake was renting from his father, respondent Thomas Eitel.[1] Appellant allegedly entered into an agreement with Jake to rent a guest home that was on the property. He alleged that Thomas was liable for his damages because Thomas owned the property and Jake was his agent in renting to appellant. The district court granted summary judgment in favor of Thomas.

On appeal, appellant challenges the district court's failure to grant him an extension of time to serve Jake and Tim. Appellant also disputes the grant of summary judgment in light of his allegation that the

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[1]Respondents Jake Eitel and Tim Farnham were never served with the complaint, and therefore, never became proper parties below. See Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446-48, 874 P.2d 729, 734-35 (1994).

09-18159

district court should have granted his motion for an extension of time to serve. In addition, appellant challenges the grant of summary judgment in favor of Thomas, arguing that material questions of fact exist to prevent summary judgment.

Initially, appellant argues that the district court failed to consider his motion for an extension of time to serve Jake and Tim. The record refutes this contention, as the district court denied appellant's motion by written order on August 27, 2008, and appellant was aware of this order, as he filed a motion for reconsideration of the denial. To the extent that appellant challenges the propriety of the district court's order, we review this determination for an abuse of discretion. Scrimer v. Dist. Ct., 116 Nev. 507, 513, 998 P.2d 1190, 1193-94 (2000). We conclude that the district court did not abuse its discretion in denying the motion. Appellant had sufficient time to effectuate service and failed to provide good cause, as required under NRCP 6, for why he needed an extension of time.

As a result, the remaining issues on appeal concern whether the district court properly granted of summary judgment in favor of Thomas. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment. Id. at 731, 121 P.3d at

1030-31; NRCP 56(e). This court reviews an order granting summary judgment de novo. Id. at 729, 121 P.3d at 1029.
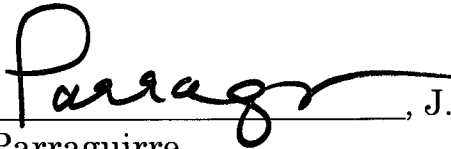
Appellant has not shown any direct wrongful action by Thomas. Appellant argues, however, that because Thomas owned the property where the attack occurred and rented the property to Jake, Thomas can be held liable for the injuries appellant suffered. A landlord is not liable for the actions of a tenant absent an agency relationship or foreseeable danger. Nallan v. Helmsley-Spear, Inc., 407 N.E.2d 451, 458 (N.Y. 1980); see also Malone v. Fons, 580 N.W.2d 697, 700 (Wis. Ct. App. 1998).
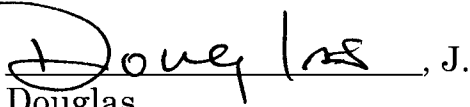
Appellant failed to provide sufficient evidence to create an issue of material fact regarding an agency relationship or foreseeable danger. Appellant asserts that Jake was Thomas' agent, but has failed to provide any evidence to support this allegation. In fact, the rental agreement between Thomas and Jake stated that the property could not be sublet without Thomas's prior written consent. The fact that Jake sublet a portion of the property to appellant, without a showing that Thomas approved such an arrangement, is insufficient to establish an agency relationship to avoid summary judgment, especially in light of the rental agreement's language prohibiting it. Additionally, appellant failed to provide any evidence that Jake's and Tim's conduct was foreseeable to Thomas. Therefore, the district court did not err in granting summary judgment.
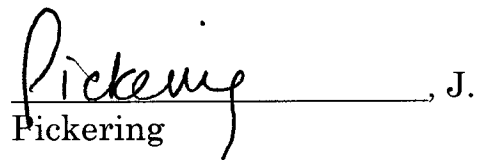
Appellant also argues that Thomas was required under the rental agreement to obtain home insurance, but that he failed to do so. The fact that Thomas was required under his rental agreement with Jake to obtain insurance does not provide appellant a cause of action against

Thomas. In order for a third party (appellant) to have a right in a contract, the parties to the contract (Thomas and Jake) must have intended to benefit the third party. Stewart-Smith Haidinger v. AVI-Truck, Inc., 682 P.2d 1108, 1112 (Alaska 1984); see also McDonald v. Riverbay Corp., 764 N.Y.S.2d 185, 187 (N.Y. App. Div. 2003). Appellant failed to establish a genuine issue of fact as to whether the parties to the rental agreement intended to create a benefit to appellant. As noted above, the rental agreement expressly prohibited subletting without prior written approval and nothing else in the agreement implies any intent to benefit appellant. Thus, appellant cannot claim a right based on the contract between Thomas and Jake, and summary judgment cannot be avoided on this basis.[2] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, J.
Parraguirre

_____, J.   _____, J.
Douglas   Pickering

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[2]We have considered appellant's other arguments on appeal and conclude that they are without merit.

[3]We deny appellant's request to reconsider the denial of his motion for appointment of counsel. There is no right to the appointment of counsel in civil cases which do not implicate incarceration for contempt. Rodriguez v. Dist. Ct., 120 Nev. 798, 804, 102 P.3d 41, 45 (2004).

cc: Hon. David A. Huff, District Judge
        Jerry Lynn Davis
        Kenneth V. Ward
        James E. Wilson
        Lyon County Clerk