

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY MILLER AND KRISTIANNA
MILLER, HUSBAND AND WIFE,
Appellants,
vs.
REPUBLIC SERVICES, INC. AND
ANTHONY GRIFFIN,
Respondents.

No. 53648

FILED

OCT 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a tort action.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

On appeal, appellants Jeffrey and Kristianna Miller argue that the district court erred in granting summary judgment because their complaint properly set forth claims for intentional torts.²

We review a district court order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029

¹Pursuant to NRAP 34(f), we have determined that oral argument is not necessary in this appeal.

²As it appears that the district court considered matters outside of the pleadings in resolving respondents' combined motion to dismiss the complaint and motion for summary judgment, the district court's dismissal order will be reviewed as a summary judgment. NRCP 12(b)(5); Schneider v. Continental Assurance Co., 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994).

(2005). Having reviewed the parties' briefs and the record on appeal, we conclude that while Nevada law recognizes the possibility that an intentional tort committed against an employee by an employer may allow the employee to avoid the conclusion that the workers' compensation statutes are the exclusive remedy, see Barjesteh v. Faye's Pub, 106 Nev. 120, 787 P.2d 405 (1990), appellants' complaint fails to properly allege an intentional tort. Appellants allege that respondents committed an intentional tort by failing to correct a known potentially injurious condition, but such an allegation is insufficient to subject an employer to liability beyond that available via the workers' compensation statutes. See Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 874-75, 8 P.3d 837, 840-41 (2000) (explaining that, in order to avoid the workers' compensation law's exclusive remedy provision, an employee must plead a deliberate and specific intent to cause injury and therefore allegations of knowledge coupled with substantial certainty of injury are not enough). Accordingly, as respondents were entitled to judgment as a matter of law, see Wood, 121 Nev. at 729, 121 P.3d at 1029, we

ORDER the judgment of the district court AFFIRMED.³

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

³As we affirm the district court's decision based on appellants' failure to adequately plead intentional tort claims, we need not consider the issue regarding Jeffrey Miller's receipt of workers' compensation benefits. Additionally, nothing in the record before us indicates that appellants ever argued to the district court that they were entitled to discovery before entry of summary judgment under NRCP 56(f), thus we do not consider this argument. See Canyon Villas v. State, Tax Comm'n, 124 Nev. ___, ___, 192 P.3d 746, 755 n.27 (2008) (noting that this court need not consider an argument raised for the first time on appeal). To the extent that this argument was raised in a document not provided to us, such as appellants' opposition to the summary judgment motion, we necessarily presume that the lower court's decision was correct. NRAP 30(b)(3) (requiring an appellant to include in the appendix to the opening brief "portions of the record essential to determination of issues raised in appellant's appeal"); see also Hampton v. Washoe County, 99 Nev. 819, 672 P.2d 640 (1983) (providing that, if the record is insufficient to allow review of the district court's decision, this court will presume the lower court acted correctly).

cc: Hon. Abbi Silver, District Judge
William F. Buchanan, Settlement Judge
Simon Law Office
Floyd, Skeren & Kelly
Eighth District Court Clerk