IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH HERNADI AND AARON CROMER, INDIVIDUALLY, AND ALL NEVADA AND/OR U.S. CITIZENS SIMILARLY SITUATED,
Appellants,
vs.
UNIVERSITY MEDICAL CENTER D/B/A UMC HOSPITAL; UMC QUICK CARE; HOSPIRA, INC.; ABBOTT LABS; DALE CARRISON, D.O.; ELIZABETH WINFIELD, P.A.; AND JOHN J. FILDES, M.D.,
Respondents.

No. 56511

FILED

JUN 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellants Elizabeth Hernadi and Aaron Cromer were patients of University Medical Center (UMC). Hernadi and Cromer commenced a negligence, fraud, and products liability action against UMC, claiming that they were subjected to unsafe medical practices while being treated there. They now appeal from the district court's entry of summary judgment.

Facts and Procedural History

Hernadi and Cromer commenced an action against UMC, Abbott Laboratories, Hospira, Inc., Dale Carrison, D.O., Elizabeth Winfield, P.A., and John J. Fildes, M.D.[1] Hernadi was administered Lidocaine by Winfield, allegedly at the direction of Carrison. Cromer was administered Lidocaine by Fildes. Hernadi and Cromer alleged that defendants exposed them to the risk of being infected with blood-borne diseases by engaging in a practice of reusing Lidocaine vials, syringes and needles on multiple patients. Carrison and Winfield filed a motion for summary judgment, which UMC joined. They argued that Hernadi and Cromer had no evidence that either Carrison or Winfield engaged in any unsafe medical practices or breached any standard of care, and had provided no evidence of a cognizable injury. Carrison also noted that he did not treat or supervise the treatment of either appellant. Hernadi and Cromer answered and argued that whether respondents improperly administered Lidocaine to them is a question of fact for the jury. They also offered the affidavits of Dr. Paul Christensen and Dr. Don Gregory as evidence of respondents' malpractice. Following respondents' reply, the

[1]The district court dismissed appellants' claims against Abbott and Hospira based on NRCP 12(b)(5) for failure to state a claim. The notice of appeal and docketing statement filed by appellants indicate that they are appealing the district court's order dismissing Abbott and Hospira, in addition to the order entering summary judgment. However, because appellants' briefs do not present any arguments regarding the order of dismissal, we deem Hernadi and Cromer to have abandoned their appeal regarding the dismissal. As a result, we dismiss Abbott and Hospira from this appeal. See Campbell v. Baskin, 69 Nev. 108, 120, 242 P.2d 290, 296 (1952).

district court heard oral arguments and granted the motion for summary judgment.

After the district court granted summary judgment for UMC, Carrison, and Winfield, Fildes brought his own motion for summary judgment on the same grounds. Although Hernadi and Cromer opposed the motion, the district court also entered summary judgment for Fildes.

Discussion

On appeal, Hernadi and Cromer argue that the district court erred in granting summary judgment for the respondents.[2] They claim that the district court erred in concluding that they did not allege any compensable injuries and insist that they presented evidence of breach and causation.[3] We conclude that there was no evidence that any of the respondents breached a duty of care due to Hernadi or Cromer and affirm the district court's grant of summary judgment.

The district court did not err in granting summary judgment

We review a district court's grant of summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper when there is no genuine issue of

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[2]We note that neither Hernadi nor Cromer requested NRCP 56(f) discovery in their opposition to summary judgment, and counsel conceded at oral arguments that additional discovery was unnecessary.

[3]Hernadi and Cromer also argue that the district court did not apply the correct legal standard when considering respondents' motion for summary judgment. Hernadi and Cromer argue that summary judgment is not permitted where there is the "slightest doubt as to the operative facts." This contention is without merit. The slightest doubt standard has been replaced by the standard set forth by this court in Wood v. Safeway, Inc., 121 Nev. 724, 731-32, 121 P.3d 1026, 1031 (2005).

material fact and the moving party is entitled to judgment as a matter of law. Id. "[W]hen 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. An issue of material fact is genuine when the evidence is such that a rational jury could return a verdict in favor of the nonmoving party. Id. at 731, 121 P.3d at 1031.

Under NRCP 56, the moving party bears the initial burden of production to show the absence of a genuine issue of material fact. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). However, once the moving party makes such a showing, the burden of production shifts to the nonmoving party to demonstrate the existence of a genuine issue of material fact. Id.

> The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) "pointing out . . . that there is an absence of evidence to support the nonmoving party's case."

Id. at 602-03, 172 P.3d at 134 (alteration in original) (footnotes omitted) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). In order to defeat summary judgment, the nonmoving party must set forth specific facts demonstrating that a genuine issue of material fact exists and may not rest upon the mere allegations or denials in the party's pleadings. NRCP 56.

In this case, the initial burden of demonstrating the absence of a genuine issue of material fact lay with the respondents. Carrison and Winfield satisfied their initial burden of showing the absence of a genuine issue of material fact by pointing out that (1) there was no admissible evidence that they breached the standard of care, (2) there was no evidence that Carrison treated or supervised the treatment of either appellant,[4] (3) there was no evidence that they treated Cromer, and (4) there was no evidence that Hernadi suffered a legally cognizable injury. Similarly, UMC pointed out that (1) Hernadi and Cromer failed to identify a cognizable injury, (2) there was no evidence that any of its employees breached an applicable standard of care, and (3) there was no evidence that any of its employees exposed Hernadi or Cromer to blood borne pathogens. Finally, Fildes argued in his separate motion for summary judgment that (1) there was no evidence of a cognizable injury, and (2) there was no evidence of a breach of the standard of care. Accordingly, the burden of production shifted to Hernadi and Cromer, who bore the burden of persuasion at trial, to set forth specific facts demonstrating the existence of a genuine issue of material fact.

Hernadi and Cromer's oppositions relied solely on their allegations in their pleadings and the affidavits by Dr. Gregory and Dr. Christensen. This, however, was insufficient to defeat summary judgment. First, with respect to Carrison, an examination of the record reveals that Hernadi and Cromer did not oppose Carrison's contention

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[4]In addition to the appellants' medical records, Carrison offered an affidavit attesting that he never treated Hernadi or Cromer, nor did he supervise their treatment.

that there was no evidence of him ever treating or supervising the treatment of either Hernadi or Cromer. Therefore, no genuine issue of material fact exists as to whether Carrison treated either appellant. Carrison was entitled to judgment as a matter of law because Hernadi and Cromer could not demonstrate that he owed them a duty of care or breached that duty of care.

With respect to the remaining respondents, Dr. Gregory's and Dr. Christensen's affidavits provide no relevant evidence. Dr. Gregory's affidavit was offered to comply with NRS 41A.071, which requires a medical malpractice complaint to be accompanied by an affidavit of a medical expert supporting the allegations. However, Dr. Gregory's capacity as a witness was limited to that of an expert witness because he did not have any personal knowledge of the relevant events. In fact, Dr. Gregory's conclusion that UMC, its physicians, and its employees were engaging in unsafe medical practices was based solely on the fact that he had been "advised" that unsafe medical practices were occurring. Dr. Gregory never identified who advised him of these unsafe practices or that person's basis for this knowledge. He also does not claim that he has specific knowledge as to the practices of Carrison, Winfield or Fildes. Therefore, Dr. Gregory's affidavit does not demonstrate that a genuine issue of material fact exists to preclude summary judgment.

Dr. Christensen's affidavit is equally inadequate. Dr. Christensen's affidavit does not establish that he had personal knowledge regarding the treatment Hernadi and Cromer had received. Instead, he merely concludes that because he had allegedly observed improper practice at some unspecified point in time and place during his employment at UMC, Hernadi and Cromer must also have been the

victims of these practices. His affidavit does not contend that he had personal knowledge that Carrison, Winfield or Fildes engaged in such practices.[5] Thus, Dr. Christensen's affidavit does not demonstrate the existence of a genuine issue of material fact.

Finally, neither affidavit contradicted UMC's contention that there was no evidence that any UMC employee participated in the alleged substandard treatment of Hernadi or Cromer. Rather, Hernadi and Cromer's complaint expressly contended that they were injected by Winfield and Fildes, who are not employees of UMC.

Accordingly, we conclude that the district court did not err in granting summary judgment for the respondents because there was no evidence of breach of a duty of care. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

[5]We note also that Dr. Christensen was no longer employed at UMC when Hernadi was treated, which creates doubt as to the relevance of his testimony.

cc: Hon. David B. Barker, District Judge
M. Nelson Segel, Settlement Judge
Morris Anderson Law
Christensen Law Offices, LLC
Morris Law Group/Las Vegas
Venable, LLC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
John H. Cotton & Associates, Ltd.
Parker, Nelson & Associates
Eighth District Court Clerk