

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN BLANCHARD,
Appellant,
vs.
CIRCUS CASINOS, INC. D/B/A CIRCUS
CIRCUS RENO,
Respondent.

No. 56996

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a summary judgment rendered in the short trial program. Second Judicial District Court, Washoe County; Albert F. Pagni, Short Trial Judge.

Appellant instituted the underlying action against respondent, alleging that respondent's security employees falsely imprisoned and defamed appellant when they detained him regarding his allegedly suspicious behavior around the slot machines. The district court previously granted summary judgment in favor of respondent on appellant's false imprisonment and defamation claims. This court affirmed the summary judgment as to appellant's false imprisonment claims, but reversed in part and remanded as to his defamation claim. Appellant now appeals a subsequent summary judgment granted in favor of respondent by the district court as to his defamation claim, as well as the denial of appellant's cross-motion for summary judgment.

This court reviews summary judgments de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed

in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. Id. To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his claims. NRCP 56(e); see also Wood, 121 Nev. at 731, 121 P.3d at 1030-31.

Appellant's motion for summary judgment

The district court found that appellant's motion did not meet any of the requirements for a motion for summary judgment. Rather, the district court determined that the motion constituted a request for reconsideration of all "prior activities, orders and decisions in this case." Viewing the motion as one for reconsideration, the district court found "no legal basis to now reconsider any prior decision or order entered" in this action. On that basis, the district court denied appellant's motion for summary judgment.

A review of appellant's motion shows that it fails to satisfy the requirements for a motion for summary judgment. NRCP 56(c). Appellant's motion consists entirely of statements of his opinions regarding his perceived unfair treatment by respondent, respondent's attorney, the district court, the arbitrator, and this court. Appellant's motion includes no statements of material facts supported by pleadings, affidavits, discovery, or any other admissible evidence. Id. The district court properly denied appellant's motion.

To the extent that the district court viewed appellant's motion as one for reconsideration of the numerous orders, activities, and decisions

that appellant discusses in his motion, an order denying reconsideration is not an appealable order. See Arnold v. Kip, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007). Therefore, we will not review the district court's order or appellant's motion to the extent the district court ruled on it as a motion for reconsideration.

Respondent's motion for summary judgment

A plaintiff alleging defamation must demonstrate “(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.” Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2002) (quoting Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459, 462 (1993)). At issue in the district court's order granting respondent's motion for summary judgment is whether there was publication of the alleged defamatory statements to a third person.

Publication occurs when the statement is communicated to a third person. M & R Investment Co. v. Mandarino, 103 Nev. 711, 715, 748 P.2d 488, 491 (1987). A defamatory statement made between employees of a corporation, however, does not constitute publication.¹ Id. Normally, publication to a third party is proven by direct evidence that the third

¹In this court's November 4, 2008, order reversing in part the district court's first summary judgment order on appellant's defamation claim, we concluded that the district court properly granted summary judgment to the extent that it held that the communication of statements between respondent's employees did not constitute publication to a third party. Accordingly, we will not address appellant's arguments on that issue.

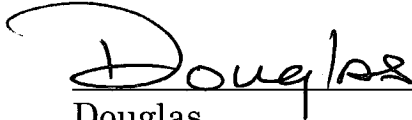
party heard the defamatory statement, but circumstantial evidence may be used to prove that the defamatory statement was communicated to a third person when evidence is presented “regarding the tone in which the defamatory statement was made or the proximity of third parties.” *Id.* at 715-16, 748 P.2d at 491.

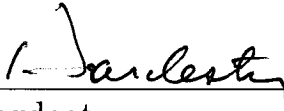
Having reviewed the civil proper person appeal statement, the available briefs and the district court record on appeal in light of these principles, we conclude that the district court properly granted summary judgment in favor of respondent on appellant’s defamation claim. When the moving party is a defendant, who does not bear the ultimate burden of persuasion at trial, it may satisfy the burden of production by: “(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 [claim].’” Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (internal citation omitted) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). “In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.” Cuzze, 123 Nev. at 603, 172 P.3d at 134.

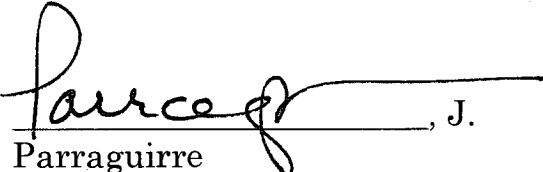
Respondent’s motion for summary judgment properly pointed out the absence of evidence in this case of publication of statements by respondent’s employees to a third party. Appellant, who would bear the burden of persuasion at trial, failed to introduce any evidence in his opposition to show a genuine issue of material fact as to whether there was a publication of the respondent’s employees’ statements to a third party. Only respondent provided any admissible evidence, in the form of

an affidavit from one of its security personnel, which supports respondent's position that no third parties heard the statements made by respondent's employees to appellant. Appellant has therefore failed to meet his burden to defeat summary judgment, and accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Douglas, J.


Hardesty, J.


Parraguirre, J.

cc: Albert F. Pagni, Short Trial Judge
Alan Blanchard
Rands, South, Gardner & Hetey
Washoe District Court Clerk

²This action was commenced prior to the enactment of Rule 7 of the Nevada Short Trial Rules, requiring that the presiding judge shall hear and decide all motions.