

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGINE ROBERTS; AND MICHAEL
ROBERTS, INDIVIDUALLY,
Appellants,
vs.
FORUM SHOPS, LLC,
Respondent.

No. 56779

GEORGINE ROBERTS; AND MICHAEL
ROBERTS, INDIVIDUALLY,
Appellants,
vs.
FORUM SHOPS, LLC,
Respondent.

No. 57013

GEORGINE ROBERTS; AND MICHAEL
ROBERTS, INDIVIDUALLY,
Appellants,
vs.
FORUM SHOPS, LLC,
Respondent.

No. 57014

GEORGINE ROBERTS; AND MICHAEL
ROBERTS, INDIVIDUALLY,
Appellants,
vs.
FORUM SHOPS, LLC,
Respondent.

No. 57015

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malm*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a final judgment in a tort action (Docket No. 56779) and from a post-judgment order denying a

motion for a new trial (Docket No. 57014).¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

On appeal, appellants argue that the district court abused its discretion by failing to sanction respondent, grant appellants a new trial, and grant them leave to amend their complaint based on alleged discovery violations, including the failure to produce certain evidence and to disclose the existence of a potential additional defendant to the action.

As to the motions for sanctions and a new trial, appellants did not raise any disputes during the discovery process or file any motions with the discovery commissioner. Although appellants contend that respondent misled them to believe that certain evidence did not exist, such that they were unaware of the need to raise any discovery issues, the record demonstrates that the allegedly withheld evidence would have been responsive to appellants' discovery requests, but that respondent objected to certain requests and further failed to produce evidence that was sought in connection with other requests. Appellants, however, took no action to challenge any of respondent's objections or otherwise object to the failure to produce such evidence. Because appellants failed to raise these issues during discovery, the district court did not abuse its discretion by denying the motion for sanctions and the motion for a new trial, particularly when the district court continued the trial and required respondent to search for any evidence that should have been produced and no evidence was found in the search. See NRCP 16.1(d)(1) ("Where available or unless otherwise

¹Although appellants filed separate notices of appeal in Docket Nos. 57013 and 57015 from two post-judgment orders awarding costs to respondent, appellants do not raise any arguments regarding these orders on appeal, and thus, we do not address them.

ordered by the court, all discovery disputes (except those presented at the pretrial conference or trial) must first be heard by the discovery commissioner.”); Foster v. Dingwall, 126 Nev. ___, ___, 227 P.3d 1042, 1048 (2010) (explaining that this court reviews a district court’s decision regarding discovery sanctions for an abuse of discretion); Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996) (“The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and this court will not disturb that decision absent palpable abuse.”).

With regard to the motion to amend the complaint, appellants argue that it was revealed at trial that a third-party contractor was responsible for housekeeping services on respondent’s premises at the time of the accident, and they therefore contend that they should have been permitted to amend their complaint to substitute the contractor in place of a defendant that was fictitiously pleaded in their complaint. In the complaint, appellants identified as fictitious defendants any parties that “owned, operated, controlled, leased, managed, maintained, designed, [or] constructed” respondent’s premises. While a single employee of the contractor had begun working for respondent at the time of the accident, the district court found that the contractor had no duty with regard to the housekeeping services, and this finding is supported by the record.² Thus,

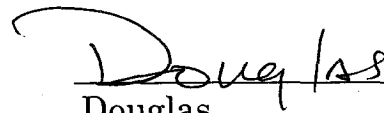
²While the record is not entirely clear as to the employee’s duties, nothing in the evidence indicates that the contractor itself had any responsibilities with regard to respondent’s housekeeping services at the time of the accident. Moreover, parts of the record, including substantial portions of the trial and hearing transcripts, were omitted from appellants’ appendix, and we presume that these portions of the record support the

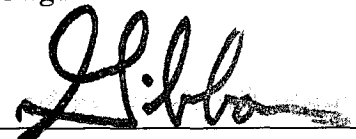
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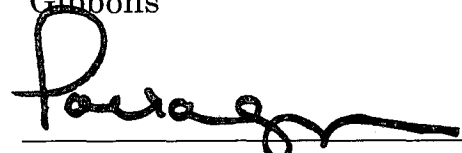
the contractor was not a party that fell within the description of the fictitious defendants, and the district court properly denied the motion to amend the complaint. See Nurenberger Hercules-Werke v. Virostek, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991) (setting forth the requirements that must be met to amend a complaint under NRCP 10(a)).

For the reasons discussed herein, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Kathleen J. England, Settlement Judge
Law Office of Daniel S. Simon
Parnell & Associates
Eighth District Court Clerk

...continued

district court's conclusions. See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).