IN THE SUPREME COURT OF THE STATE OF NEVADA

JEMOND K. WHITE, AN INDIVIDUAL; NATASHA WHITE, AN INDIVIDUAL; AND CAROL ANDERSON, AN INDIVIDUAL,
Appellants,
vs.
MARWAN MEDIATI, AN INDIVIDUAL,
Respondent.

No. 57710

FILED

DEC 14 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 short trial tort action. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

This court reviews de novo a district court appeal from an order granting summary judgment. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." Id. at 731, 121 P.3d at 1031 (disavowing the "slightest doubt" standard that prior decisions had alluded to). When deciding a summary judgment motion, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id. at 729, 121 P.3d at 1029.



12-39531

On appeal, appellants point to several pieces of evidence that they contend are admissible and sufficiently create a question of fact regarding whether respondent negligently entrusted his car to his nephew. Zugel v. Miller, 100 Nev. 525, 528, 688 P.2d 310, 313 (1984) ("The key elements [of a negligent entrustment claim] are [(1)] whether an entrustment actually occurred, and [(2)] whether the entrustment was negligent.").

The nephew's statement to the insurer is inadmissible hearsay

Respondent's insurer interviewed the nephew in the days following the accident, and its claims adjuster wrote the following notation in the claims file: "[The nephew] states he had permission to drive . . . ."[1] Appellants contend that this statement satisfies several exceptions to the hearsay rule and therefore constituted admissible evidence as to whether respondent entrusted his car to the nephew.[2] We disagree.

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[1]The claims file also contained a statement from respondent in which he recalled hearing from someone who had heard from respondent's sister that she had heard the nephew say that he was taking respondent's car keys. Appellants concede in their reply brief that respondent did not directly hear the nephew say he was taking the keys, making this statement in the claims file irrelevant for purposes of showing that respondent acquiesced to the nephew using his car. Cf. Clark v. Progressive Ins. Co., 984 S.W.2d 54, 58 (Ark. Ct. App. 1998) (indicating that entrustment can be implied from "acquiescence or lack of objection signifying consent"). Thus, we need not consider whether this statement's multiple layers of hearsay would preclude its admissibility. NRS 48.025(2) ("Evidence which is not relevant is not admissible.").

[2]Appellants also contend that this statement was not hearsay because it was an admission by a party opponent. See NRS 51.035(3)(a). This contention is belied by the statute's plain language, which provides that a statement is not hearsay if "[t]he statement is offered against a party and is . . . [t]he party's own statement." Id. (emphasis added). Here,

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Appellants contend that the above statement should be admissible because it has "strong assurances of accuracy." NRS 51.315(1)(a) (setting forth the standard for admissibility when the declarant is unavailable to testify);[3] see also NRS 51.075(1) (setting forth a similar standard under the general exception to the hearsay rule). Specifically, appellants contend that the nephew had no reason to lie because he did not yet know that he would be denied coverage under respondent's policy if he did not have permission to drive respondent's car. The nephew, however, had a strong motivation to lie in order to avoid liability for theft or other potential punishment. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (considering a declarant's "apparent motive to lie" as a key factor in determining whether a statement has strong assurances of accuracy). Thus, we perceive no abuse of discretion in the short trial judge's determination that the statement was not admissible under NRS 51.315 or NRS 51.075.[4] FGA, Inc. v. Giglio, 128

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appellants are attempting to offer the nephew's statement against respondent. Neither Franco v. State, 109 Nev. 1229, 866 P.2d 247 (1993), nor Cunningham v. State, 113 Nev. 897, 944 P.2d 261 (1997), support appellants' argument. In Franco, we concluded that it was improper for the prosecution to use one codefendant's statement against another codefendant. 109 Nev. at 1242-43, 866 P.2d at 255-56. And in Cunningham, we concluded that a statement made by a defendant could be introduced as evidence against him. 113 Nev. at 905-06, 944 P.2d at 266.

[3]Although the nephew was a defendant in the underlying lawsuit, he reportedly fled the country and was unavailable to give deposition testimony or make a sworn statement.

Nev. ___, ___, 278 P.3d 490, 497 (2012) (reviewing a district court's evidentiary rulings for an abuse of discretion).

Respondent's purported apology lacks relevance

Shortly after the accident, an unidentified person approached one of the appellants and told the appellant "that [appellant] did not have to worry because [the person] had insurance that would cover the accident." Appellants contend that this unidentified person was respondent and that this statement is admissible non-hearsay under NRS 51.035(3)(a) as a party admission and under various exceptions to the hearsay rule.

Even accepting appellants' stance that it was respondent who made this statement, Wood, 121 Nev. at 729, 121 P.3d at 1029, the statement lacks relevance because it has no bearing on whether respondent entrusted his car to his nephew. NRS 48.025(2) ("Evidence which is not relevant is not admissible."); NRS 48.015 ("'[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence . . . more or less probable."). That is, respondent simply acknowledged that his car was involved in the accident and conveyed the incorrect assumption that this was all that was needed to trigger coverage under his insurance policy. Thus, as respondent's purported apology lacks relevance, the short trial judge properly excluded

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[4]After considering appellants' arguments regarding admissibility under NRS 51.105(1) (state of mind), NRS 51.345 (statement against interest), and NRS 51.085 (present sense impression), we conclude that these arguments lack merit.

it, NRS 48.025(2), and it cannot be used to create a genuine issue of material fact. Wood, 121 Nev. at 731, 121 P.3d at 1031.

The accident report's relevance is based upon speculation

Following the accident, a responding police officer completed an accident report that did not mention whether the nephew had permission to drive respondent's car. Appellants maintain that the absence of such information in the report suggests that respondent arrived at the scene and told the officer that he had given the nephew permission to drive his car. Consequently, appellants contend that the accident report itself constitutes admissible evidence sufficient to create a question of fact regarding entrustment. We disagree.

Any number of reasons exists for the absence of such information in the report. Thus, the inference appellants seek to draw from the report is far too attenuated to create a genuine issue of material fact. Wood, 121 Nev. at 732, 121 P.3d at 1031 (indicating that a party seeking to avoid summary judgment may not build a case on speculation). Because the report is irrelevant without this attenuated inference, it is therefore inadmissible.[5] NRS 48.025(2).

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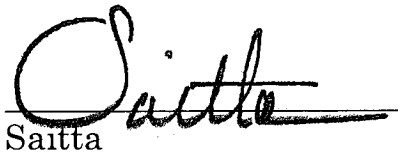
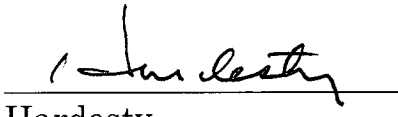
[5]Lastly, appellants contend that a jury could infer from respondent's deposition testimony that his relationship with the nephew was such that the nephew may have thought he had permission to use respondent's car. Clark, 984 S.W.2d at 58 (indicating that entrustment can be inferred from the "relationship between the parties"). This contention is based upon a mischaracterization of respondent's testimony. Respondent testified that all of the nephew's family members, including respondent, would have been angry if the nephew used one of their cars without permission. The possibility that respondent would have been the least angry out of all the family members does not suggest an implied entrustment. Wood, 121 Nev. at 732, 121 P.3d at 1031 (indicating that a party seeking to avoid summary judgment may not build a case on speculation).

As appellants failed to produce admissible evidence sufficient to raise a question of fact on the issue of entrustment, we

ORDER the judgment of the district court AFFIRMED.[6]


Saitta, J.


Pickering, J.


Hardesty, J.

cc: Hon. Doug Smith, District Judge
James J. Jimmerson, Settlement Judge
G. Dallas Horton & Associates
Dennett Winspear, LLP
Eighth District Court Clerk

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[6]Having considered appellants' arguments regarding the short trial judge's decision to limit discovery and the judge's refusal to impose discovery sanctions, we conclude that they lack merit. The short trial judge was well within his discretion to limit appellants' review of the claims file to only those documents that the judge deemed relevant. Club Vista Financial Servs. v. Dist. Ct., 128 Nev. ___, ___, 276 P.3d 246, 249 (2012) ("[W]e will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion."). Likewise, given the judge's in camera review of the file, we are confident that any attempt by respondent or his insurer to destroy evidence would have been detected. Thomas v. Hardwick, 126 Nev. ___, ___, 231 P.3d 1111, 1117 (2010) (indicating that a trial court judge has discretion in determining whether discovery sanctions are warranted).