

IN THE SUPREME COURT OF THE STATE OF NEVADA

REBECCA PENNINGTON,  
INDIVIDUALLY AND AS NATURAL  
PARENT AND NEXT OF KIN OF  
THADDIUS LEE SHELTON,  
DECEASED,  
Appellant,  
vs.  
ED'S TIRE SERVICE, INC., A NEVADA  
CORPORATION,  
Respondent.

No. 57769

**FILED**

**MAR 18 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court summary judgment in a tort action. Sixth Judicial District Court, Lander County; Richard Wagner, Judge.

Thaddius Shelton was employed by University of Nevada, Reno (UNR), working in the Boot Strap Program. His employment with UNR was subject to a contract with the Bureau of Land Management (BLM) for field work to be performed by UNR employees on BLM-managed property in the Battle Mountain area. While working, Shelton was hit and killed by a BLM-owned vehicle that was stopped on a downslope when the parking brake allegedly failed. Respondent had performed maintenance on that truck, including repairs related to the parking brake and the parking brake cable.

Appellant brought an action against respondent for wrongful death, alleging that respondent failed to properly perform repairs on the BLM truck. Respondent filed a motion for summary judgment, arguing

that there is no evidence that it owed a duty of care to Shelton<sup>1</sup>, was negligent, or that any alleged negligence on its part was the cause of Shelton's death. Appellant argued in opposition that questions of fact remain regarding whether respondent caused the faulty parking brake or should have seen that the parking brake was not functioning properly when it made repairs. The district court granted respondent's motion, and this appeal followed.

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.* But, the nonmoving party bears the burden of demonstrating that a genuine issue of material fact exists. *Id.* at 732, 121 P.3d at 1031.

"In order to prevail on a traditional negligence theory, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal

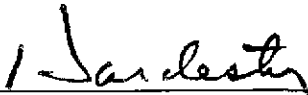
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<sup>1</sup>In arguing that it did not owe appellant a legal duty, respondent limited its argument to statements that it did not repair that part of the parking brake alleged to have failed, and thus, it owed no duty to appellant for the failure of that part of the parking brake. *Cf. Wright v. Schum*, 105 Nev. 611, 615, 781 P.2d 1142, 1144 (1989) (concluding that respondent owed a duty of care to the appellant because he rendered services that were necessary for the protection of appellant, a third-party); Restatement (Second) of Torts § 324A (1965) ("One who undertakes . . . for consideration, to render services to another which he should recognize as necessary for the protection of a third person . . . is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care.").

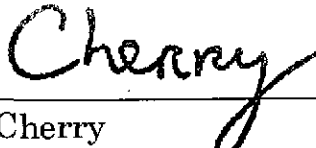
cause of the plaintiff's injuries, and (4) the plaintiff suffered damages." *DeBoer v. Senior Bridges of Sparks Family Hosp., Inc.*, 128 Nev. \_\_\_, \_\_\_, 282 P.3d 727, 732 (2012). Summary judgment is appropriate in a negligence action when a plaintiff cannot recover as a matter of law. *Foster v. Costco Wholesale Corp.*, 128 Nev. \_\_\_, \_\_\_, 291 P.3d 150, 153 (2012).

Having reviewed the parties' arguments and the record on appeal, we conclude that the district court erred in granting summary judgment in respondent's favor. Appellant presented testimony that respondent either caused the faulty parking brake while repairing the parking brake cable, or else would have seen that the assembly was loose during the two times that respondent performed repairs on the parking brake cable. Genuine issues of material fact remain in dispute, therefore, as to whether respondent was negligent in servicing the parking brake and whether that negligence caused Shelton's injuries. As issues of fact remain in dispute and questions of a defendant's breach of duty in a negligence action are generally considered a question of fact for the jury, summary judgment was not proper. *See id.*; *Lee v. GNLV Corp.*, 117 Nev. 291, 296, 22 P.3d 209, 212 (2001). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Richard Wagner, District Judge  
Carolyn Worrell, Settlement Judge  
Theodore C. Herrera  
Watson Rounds  
Lander County Clerk