

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOISES VALENZUELA,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondent.

No. 58965

FILED

NOV 16 2012

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

ORDER AFFIRMING IN PART, REVERSING
IN PART, AND REMANDING

This is a proper person appeal from a district court order granting summary judgment in part and dismissing in part a tort action. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge. As directed, respondent has filed a response.¹

Appellant filed a complaint against respondent alleging that he slipped and fell while working in the prison kitchen. Respondent subsequently moved for dismissal of a number of appellant's claims and for summary judgment as to his remaining claims. Appellant responded that genuine issues of material fact existed and requested additional time to conduct discovery to develop the evidence in support of his claims. Appellant also submitted an affidavit identifying the discovery he wished to conduct and the evidence he expected to gain through the discovery.

¹The order directing a response instructed respondent to address two specific issues: (1) whether violations of NRS Chapter 618 and NRS 209.131 may be used to help establish a negligence claim, and (2) whether the district court should have afforded appellant time to conduct additional discovery pursuant to NRCP 56(f). We note that respondent failed to specifically address either issue, instead arguing generally that summary judgment was appropriate.

Thereafter, the district court dismissed most of appellant's claims and granted summary judgment in favor of respondent on appellant's general negligence claims, implicitly denying appellant's request for a continuance.

As to the general negligence claims, we conclude that the district court abused its discretion by denying appellant's request for a continuance of the summary judgment motion and instead granting the motion.² See Aviation Ventures v. Joan Morris, Inc., 121 Nev. 113, 118, 110 P.3d 59, 62 (2005) (explaining that this court reviews the denial of a motion for a continuance of summary judgment proceedings for an abuse of discretion). Appellant properly supported his request for a continuance with an affidavit stating that further discovery was necessary to help him oppose the summary judgment motion and explaining the factual evidence he expected to learn by deposing additional witnesses. See Choy v. Ameristar Casinos, Inc., 127 Nev. ___, ___, 265 P.3d 698, 700 (2011) (providing that a party requesting a continuance of a summary judgment motion to conduct further discovery must attach an affidavit explaining why he is seeking the continuance); see also Aviation Ventures, 121 Nev. at 118, 110 P.3d at 62 (explaining that an NRCP 56(f) continuance is appropriate when the party specifies how further discovery will help him oppose the summary judgment motion). Moreover, the proceedings were still at a relatively early stage, as the summary judgment order was filed

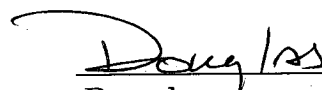
²Respondent argued in its response that because appellant admitted that he was employed by the NDOC at the time of his injury, his only remedy was through workers' compensation. Respondent did not raise this argument in the district court, however, and thus, we decline to address it on appeal. See Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006).


just over two years after the initiation of the action and less than a year after appellant had properly filed a second amended complaint. See Harrison v. Falcon Products, 103 Nev. 558, 746 P.2d 642 (1987) (reversing a summary judgment based on NRCP 56(f) when less than two years had passed between the filing of the complaint and the grant of summary judgment). Under the circumstances, we reverse the portion of the district court's order granting summary judgment on the general negligence claims and remand this matter to the district court for further proceedings.

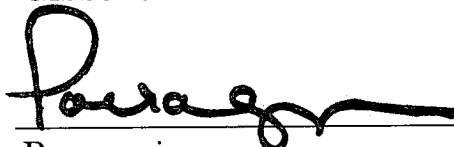
As to the dismissal of the remaining claims, to the extent that appellant attempted to state separate causes of action based on NRS Chapter 618 and NRS 209.131, we affirm the district court's dismissal of those claims. See Frith v. Harrah South Shore Corp., 92 Nev. 447, 451, 552 P.2d 337, 340 (1976) (explaining that there is no private civil remedy for a violation of the Nevada Occupational Safety and Health Act codified in NRS Chapter 618); see also NRS 209.131 (setting forth the duties of the Director of the Nevada Department of Corrections but providing no indication that the Legislature intended to create a private right of action to address the Director's alleged failure to fulfill his duties); Baldonado v. Wynn Las Vegas, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008) (providing that the absence of a provision creating a private right of action suggests that the Legislature did not intend to create one). Nevertheless, we note that if appellant is able to produce evidence demonstrating that respondent violated these provisions, such evidence may be used to support his general negligence claims. See Robertson v. Burlington Northern R. Co., 32 F.3d 408, 410-11 (9th Cir. 1994) (explaining that, while a violation of the Occupational Safety and Health Act, which is

similar to Nevada's Occupational Safety and Health Act, is not negligence per se, it may be evidence of negligence).

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Richard Wagner, District Judge
Moises Valenzuela
Attorney General/Carson City
Sixth Judicial District Court Clerk