

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEVE MALLORY; AND DELORES
MALLORY, HUSBAND AND WIFE,
Appellants,
vs.
HUMBOLDT COUNTY; HUMBOLDT
COUNTY COMMISSIONERS; AND
HUMBOLDT COUNTY REGIONAL
PLANNING COMMISSION,
Respondents.

No. 59666

FILED

NOV 16 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a tort action. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Appellants filed a complaint alleging "Improper closure of right of way/Public Endangerment/Loss of Revenue" against respondents, based on the Nevada Department of Transportation's closure of an approach from U.S. Highway 95, to which appellants own adjacent property. The district court granted summary judgment in favor of respondents on the bases that (1) appellants sued improper defendants; (2) respondents, as government entities and government employees, are immune from liability under NRS 41.032(2); (3) appellants' claims are precluded under NRS 278.0235 because they were filed more than 25 days after the action or decision challenged by appellants; and (4) appellants filed their complaint after the statute of limitations for actions to recover damages for injuries caused by the wrongful act of another had already run. This appeal followed.

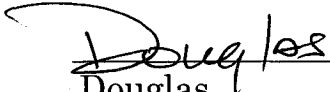



This court reviews summary judgments de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. Id. 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. NRC 56(e); see also Wood, 121 Nev. at 731, 121 P.3d at 1030-31.

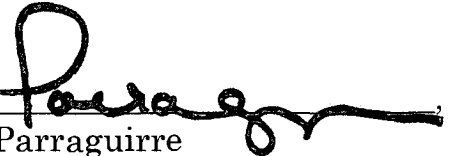
Having reviewed appellants' proper person appeal statement and the record on appeal, we conclude that the district court did not err in granting summary judgment in favor of respondents. The record shows that appellants agreed to the closure of the approach, that the holder of the encroachment permit agreed to its revocation, and that respondents were not responsible for the closure of the approach at issue. Respondents were therefore entitled to summary judgment on appellants' claims. See Dudley v. Prima, 84 Nev. 549, 552, 445 P.2d 31, 33 (1968) (holding that "[t]he law is settled that a person is not liable for injuries resulting from conditions which he has not been instrumental in creating or maintaining"). The record also shows that the actions taken by respondents in respect to appellants' conditional use permit were discretionary and based on considerations of social, economic, and political policy, and respondents are therefore immune from liability for those actions under NRS 41.032(2). Additionally, appellants' complaint is time-barred because they filed their action more than two years after they

allege they were damaged by the closure of the approach. NRS 11.190(4)(e) (providing a two-year statute of limitations for injuries for “action[s] to recover damages for injuries to a person . . . caused by the wrongful act or neglect of another”). Accordingly, as we see no error in the district court’s summary judgment, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Michael Montero, District Judge
Cleve Mallory
Delores Mallory
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Humboldt County Clerk