


IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD SEIFFERT,
Appellant,
vs.
CITY OF RENO,
Respondent.

No. 60046

FILED

FEB 13 2014

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 tort action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant brought a negligence action against respondent City of Reno after being injured by crashing his bicycle. Appellant argued that a Reno Police Department (RPD) officer negligently placed police caution tape across a bicycle path without providing adequate warning of the hazard. The City moved for summary judgment based on discretionary immunity, and the district court granted the motion.

This court reviews a district court's summary judgment order de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). To receive discretionary-act immunity under NRS 41.032(2), a public employee's decision "must (1) involve an element of individual judgment or choice and (2) be based on considerations of social, economic, or political policy." *Martinez v. Maruszczak*, 123 Nev. 433, 446-47, 168 P.3d 720, 729 (2007). "[D]ecisions at all levels of government, including frequent or routine decisions, may be protected by discretionary-act immunity. . . ." *Id.* at 447, 168 P.3d at 729. A police officer's discretionary decisions concerning the scope and manner of conducting an investigation are immune under NRS 41.032, so long as they are based on police policy

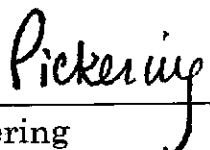
and do not violate a mandatory directive. *Sandoval v. Las Vegas Metro. Police Dep't*, 854 F. Supp. 2d 860, 880-81 (D. Nev. 2012) (concluding that law enforcement officers were entitled to discretionary-act immunity from tort liability under NRS 41.032 because their decision to investigate a possible crime involved judgment based on policy considerations and there was no evidence that the officers violated any mandatory directives during the investigation).

Here, RPD Officer Browett's decision in directing a fire department employee to hang caution tape across a bicycle path to secure pedestrian traffic in the area surrounding where a dead body was found required the officer's individual judgment in assessing the scene. Such a decision involves consideration of policy factors, including protecting public safety by guiding pedestrian and bicycle traffic away from the scene and preserving evidence in the event that the body or other evidence suggested the commission of a crime. In following the RPD's general order, Officer Browett's conduct was based on police policy and did not violate a mandatory directive. This conduct satisfies the elements for discretionary-act immunity and, accordingly, respondent may not be sued on the basis of the officer's actions. *Martinez*, 123 Nev. at 446-47, 168 P.3d at 729. Appellant's argument that hanging the tape was operational, and thus, not within the scope of discretionary-act immunity fails to observe that *Martinez* expressly replaced the planning-versus-operational test with the two-step federal analysis. *Id.* at 443-47, 168 P.3d at 726-29. Appellant has not set forth specific facts demonstrating a genuine dispute with respect to whether respondent's conduct was entitled to immunity under the *Martinez* test. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.


Additionally, appellant's contention that respondent's motion for summary judgment was untimely does not warrant reversal. Where a

matter has been submitted for arbitration, dispositive motions must be brought at least 45 days before the arbitration date or the district court “may” foreclose the motion or impose sanctions. NAR 4(E). The rule provides the district court with discretion to impose a remedy for late-filed dispositive motions, but does not require the district court to reject the motion. See *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990) (construing “may” as permissive and “shall” as mandatory, absent contrary legislative intent). In this case, the district court declined to sanction respondent or foreclose respondent’s motion for summary judgment. Appellant has provided no legal authority supporting his assertion that this exercise of discretion mandates reversal. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider claims that are not cogently argued or supported by relevant authority). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

¹In response to respondent’s motion to strike, appellant has requested that this court take judicial notice of the disposition of a summary judgment motion in Second Judicial District Court Case No. CV-11-00328. We deny the request for judicial notice. *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (recognizing the rule that this court generally will not take judicial notice of records in another case); see also *Carson Ready Mix, Inc. v. First Nat’l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).

cc: Hon. Brent T. Adams, District Judge
David Wasick, Settlement Judge
Jeffrey Friedman
Reno City Attorney
Washoe District Court Clerk