

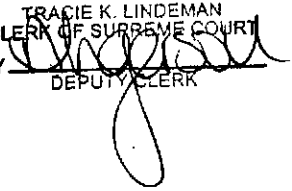
IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK DILLON,  
Appellant,  
vs.  
VICTORY VILLAGE 2004, LLC, A  
NEVADA CORPORATION; AND B&R  
PROPERTY MANAGEMENT, INC., A  
NEVADA CORPORATION,  
Respondents.

No. 60664

**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, certified as final under NRCP 54(b), in a tort action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Appellant filed a complaint against respondents alleging claims for battery, assault, intentional infliction of emotional distress, false imprisonment, negligent hiring, negligent supervision, negligent retention, gross negligence, and respondeat superior. The basis for these claims was respondents' co-employment of William Scudier, who pleaded guilty to multiple criminal charges of felony coercion based on his conduct toward appellant. Respondents filed a motion for summary judgment, arguing that Scudier's criminal actions against appellant were not reasonably foreseeable under NRS 41.745, which dictates the circumstances under which an employer is not liable for harm caused by the intentional torts of an employee. The district court granted summary judgment in respondents' favor, and certified the judgment as final under NRCP 54(b). 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. NRCP 56(e); *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

Having considered the parties' arguments and the record on appeal, we conclude that the district court did not err in granting summary judgment in respondents' favor. NRS 41.745 states that an employer is not liable for injury caused by the intentional acts of its employee if the conduct:

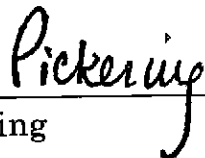
- (a) Was a truly independent venture of the employee;
- (b) Was not committed in the course of the very task assigned to the employee; and
- (c) Was not reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of his or her employment.

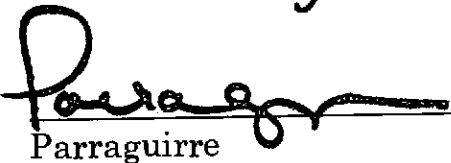
For the purposes of this subsection, conduct of an employee is reasonably foreseeable if a person of ordinary intelligence and prudence could have reasonably anticipated the conduct and the probability of injury.

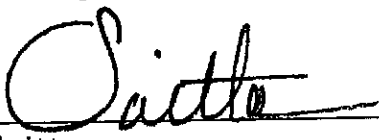
Appellant agrees that respondents employed Scudier as a maintenance technician and maintenance supervisor at the Victory Village Apartments. Scudier had a prior criminal history for drug offenses, but had no previous convictions for sexual crimes, and neither

respondent ever received complaints of sexually inappropriate or criminal behavior by Scudier. Accordingly, we perceive no error in the district court findings that Scudier's actions toward appellant were not reasonably foreseeable and resulted from his independent acts that were outside the course and scope of his employment as a maintenance technician and supervisor at the apartment complex, even if they were committed while he was on-duty, as appellant alleges. *Wood v. Safeway, Inc.* 121 Nev. 724, 739-40, 121 P.3d 1026, 1036-37 (2005) (concluding that a cleaning company employer was not liable for the intentional conduct of its janitorial employee, under NRS 41.745, when the employee committed a sexual assault while on-duty). Accordingly, the district court did not err in granting summary judgment, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Saitta

cc: Eighth Judicial District Court Dept. 4  
Paul H. Schofield, Settlement Judge  
Cliff W. Marcek  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Olson, Cannon, Gormley, Angulo & Stoberski  
Eighth District Court Clerk