

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS HEALEY; AND OK CHA
TUBBERVILLE ON BEHALF OF AND
AS JOINT ADMINISTRATORS FOR
THE ESTATE OF LISA HEALEY,
Appellants,
vs.
MACAYO VEGAS, INC., D/B/A
MACAYO'S MEXICAN RESTAURANT,
Respondent.

No. 67954

FILED

MAR 02 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a torts action. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Lisa Healey, an employee of respondent, was sent home from work for being intoxicated while on duty. On her way home, she was crossing the street and was struck and killed by a car. Appellants, who are Healey's parents, filed a complaint against respondent alleging wrongful death and related negligence claims. The district court dismissed the complaint for failure to state a claim, concluding that respondent did not owe Healey a duty on which appellant's claims could be founded. This appeal followed.

On appeal, appellants argue that an employee handbook issued to Healey established that, upon suspecting that Healey was intoxicated, respondent had a duty to transport her to a facility for drug and alcohol testing and then to transport her home. But the handbook merely stated that an employee may be required to submit to testing on a

reasonable suspicion of intoxication. It did not compel respondent to order an employee to submit to testing or otherwise require respondent to take any particular action when an employee was intoxicated at work. Thus, the district court correctly concluded that no duty was created by the employee handbook in this case. *See Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011) (recognizing that whether a defendant owed a duty of care presents a question of law).

Appellants also argue that respondent had a more general duty under a negligence theory to take steps, such as calling a taxi or otherwise providing a ride, to ensure that Healey was safe upon being required to leave work. Although the Nevada Supreme Court has not addressed this particular situation with an employer and employee, that court has held that no such duty exists when a proprietor evicts a patron from the proprietor's business because of intoxication. *See, e.g., Rodriguez v. Primadonna Co.*, 125 Nev. 578, 587, 216 P.3d 793, 800 (2009) (concluding that a company had the right to evict intoxicated patrons from the premises and did not have any duty to ensure the evicted patrons' safe transportation, to keep them on the premises, or to "otherwise prevent injuries subsequent to their eviction").


Appellants contend that this authority does not apply here because the relationship was that of employer and employee, rather than business owner and patron. But appellants have not identified any authority supporting this distinction or otherwise demonstrating that an employer has a duty to ensure the safety of its employee when that employee is required to leave work due to intoxication. As a result, we decline to consider this argument further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006)


(explaining that the appellate court need not consider claims that are not cogently argued or supported by relevant authority).

As appellants have not identified any duty on which their claims could be based and have not otherwise set forth a valid basis for overturning the district court's order, we conclude that the district court properly dismissed appellants' complaint. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (recognizing that an order granting a motion to dismiss for failure to state a claim is reviewed de novo under a rigorous standard). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Scotti, District Judge
Phillip Aurbach, Settlement Judge
Kang & Associates PLLC
Law Offices of Elizabeth R. Mikesell
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Eighth District Court Clerk