IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WADE MAY,
Appellant,
vs.
CALIFORNIA HOTEL AND CASINO, A NEVADA CORPORATION,
Respondent.

No. 68419

FILED

DEC 21 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a torts action. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Wade May sued respondent California Hotel and Casino (CHC) for assault, false imprisonment, and intentional infliction of emotional distress. CHC moved to dismiss the action or for summary judgment, and the district court granted summary judgment as to each of May's claims. This appeal followed.

On appeal, May challenges the summary judgment on his assault claim, arguing the district court improperly relied on a surveillance video rather than construing the evidence and unspecified inferences in his favor. Having viewed the video, we agree with the district court that the video refutes May's allegations that a particular security guard engaged in threatening behavior.

Given the discrepancy between May's allegations and the surveillance video, the district court could not simply adopt May's account of the incident. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that *reasonable* inferences must be drawn in

favor of the nonmoving party at the summary judgment stage); *see also Scott v. Harris*, 550 U.S. 372, 378-81 (2007) (explaining that a videotape blatantly contradicted a plaintiff's version of events and concluding that the plaintiff's account therefore should not have been adopted for purposes of summary judgment). And because May does not identify any other evidence to demonstrate that the guard acted with intent to cause a harmful or offensive contact or imminent apprehension of such a contact, he failed to establish a genuine issue of material fact with regard to his assault claim. *See Wood,* 121 Nev. at 729, 121 P.3d at 1029 (reviewing a district court summary judgment de novo); *see also* Restatement (Second) of Torts § 21(1) (1965) (discussing the elements of assault).

May next argues the district court improperly relied on *Lerner Shops of Nevada, Inc. v. Marin*, 83 Nev. 75, 423 P.2d 398 (1967), in granting CHC summary judgment on his false imprisonment claim. Our de novo review demonstrates that certain portions of *Lerner* are relevant to this case. In particular, in *Lerner*, the supreme court held that "intent to confine is an essential element" of a false imprisonment claim, noting that "submission to the mere verbal direction of another, unaccompanied by force or threats of any character, does not constitute false imprisonment." *Id.* at 78-79, 423 P.2d at 400-01. Here, May alleged that he subjectively believed that he was confined, but he does not point to any evidence to demonstrate that CHC's employees had any intent, or otherwise took any steps, to confine him. *See id.*; *see also Mayweather v. Isle of Capri Casino, Inc.*, 996 So. 2d 136, 141 (Miss. Ct. App. 2008) (explaining that "[w]here no force or violence is actually employed, the submission of the plaintiff must be to a reasonably apprehended force") (quoting *Martin v. Santora*, 199 So. 2d 63, 65 (Miss. 1967)).

Indeed, May has not alleged that he was told, or even asked, to stay in any particular area, and nothing in the surveillance video provides evidence of an intent to confine him. Instead, the video shows that May simply waited at the CHC cashier's window for 3 minutes and 31 seconds until he received his money and left without interference. Consequently, we conclude that May failed to establish a genuine issue of material fact with regard to the confinement element of his false imprisonment claim. *See Lerner*, 83 Nev. at 78-79, 423 P.2d at 400-01.

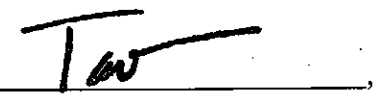
Lastly, May contends the district court improperly resolved his intentional infliction of emotional distress claim in a summary proceeding, but on review of the record, we also conclude that he failed to establish a genuine issue of material fact with regard to whether CHC's conduct was extreme and outrageous. *See Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (explaining that extreme and outrageous conduct is one of the prima facie elements of an intentional infliction of emotional distress claim). And because May failed to establish a genuine issue of material fact with regard to his claims, we affirm the district court's order granting CHC summary judgment.[1] *See Wood*, 121 Nev. at 729, 121 P.3d at 1029 (explaining that summary judgment is

[1]To the extent that May argues the district court violated his right to a jury trial by granting CHC summary judgment on his claims, his suggestion is without merit. *See Etalook v. Exxon Pipeline Co.*, 831 F.2d 1440, 1447 (9th Cir. 1987) ("The very existence of a summary judgment provision demonstrates that no right to a jury trial exists unless there is a genuine issue of material fact suitable for a jury to resolve.").

appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law).[2]

It is so ORDERED.[3]


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Carolyn Ellsworth, District Judge
Stephen E. Haberfeld, Settlement Judge
Law Offices of Michael P. Balaban
Olson, Cannon, Gormley, Angulo & Stoberski
Eighth District Court Clerk

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[2]In light of our conclusions herein, we need not reach the parties' arguments regarding immunity.

[3]CHC, in its answering brief, requests that we dismiss this appeal based on various procedural omissions. We deny that request because the supreme court already considered the alleged omissions in the context of a separate motion to dismiss and denied CHC's request. *See May v. Cal. Hotel & Casino,* Docket No. 68419 (Order, June 29, 2016).