

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN MICHAEL NEWKIRK,  
INDIVIDUALLY,  
Appellant,  
vs.  
U.S. REALTY & PROPERTY  
MANAGEMENT, A NEVADA  
CORPORATION; DENNIS SCHAFFER,  
INDIVIDUALLY; AND VIRGINIA  
RATLIFF, INDIVIDUALLY,  
Respondents.

No. 69832

**FILED**

JAN 31 2017

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, certified as final pursuant to NRCP 54(b), in a torts action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant John Michael Newkirk sued respondents Dennis Schaffer, Virginia Ratliff, and U.S. Realty & Property Management (where appropriate, Schaffer, Ratliff, and U.S. Realty are referred to collectively as Schaffer in this order) for negligence, alleging that he was bitten by a dog while on residential rental property owned by Schaffer and Ratliff and managed by U.S. Realty. Schaffer moved for summary judgment, which the district court granted, finding that Schaffer, who leased the property to a tenant and was not aware that the dog was being kept on the property, did not owe a duty of care to prevent the dog bite.<sup>1</sup> Schaffer

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<sup>1</sup>The caption on this appeal initially included all of the defendants named below, but the district court's summary judgment, certified as final under NRCP 54(b), specifically granted summary judgment only to Schaffer, Ratliff, and U.S. Realty. Thus, they are the only proper respondents to this appeal. Accordingly, the clerk of the court shall conform the caption in this case to the caption on this order.

subsequently moved for attorney fees and costs based on Newkirk's refusal to accept a prior offer of judgment. The district court granted that motion and this appeal followed.

We first consider Newkirk's argument that the district court improperly granted Schaffer summary judgment on his negligence claim. To prevail on a negligence claim, a plaintiff must establish, as relevant here, that the defendant breached a duty of care owed to the plaintiff. *DeBoer v. Senior Bridges of Sparks Family Hosp., Inc.*, 128 Nev. 406, 412, 282 P.3d 727, 732 (2012) (setting forth the traditional elements of a negligence claim). Under Nevada law, a landlord only has a duty to protect third parties from a tenant's dogs if the landlord assumes such a duty through his or her actions. *Wright v. Schum*, 105 Nev. 611, 618, 781 P.2d 1142, 1146 (1989) (discussing a landlord's liability for his or her tenant's pets). Here, Schaffer's inclusion of pet restrictions in the lease agreement was not an affirmative act assuming a duty of care under *Wright*, and Newkirk did not present any other evidence to demonstrate that Schaffer had acted in such a way as to assume a duty. Thus, the district court properly granted Schaffer summary judgment on Newkirk's negligence claim.<sup>2</sup> See *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court summary judgment de novo).

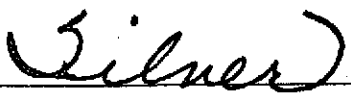
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<sup>2</sup>Newkirk also asserts that he is a third-party beneficiary under the lease agreement between Schaffer and his tenant and that he is entitled to damages based on Schaffer's failure to enforce a provision of that agreement requiring the tenant to obtain liability insurance for any pets she kept on the property. But Newkirk did not present a contract-based claim in his complaint, and Schaffer's alleged failure to enforce the provision is not relevant to whether he had assumed a duty of care to protect against damages caused by the dog. Thus, we do not address this argument further.

Additionally, having considered all of the challenges to the district court's award of attorney fees and costs, we discern no abuse of discretion in that decision. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. \_\_\_, \_\_\_, 319 P.3d 606, 615 (2014) (providing that orders with regard to attorney fees and costs are reviewable for an abuse of discretion). In particular, regardless of the repeal of NRS 17.115, the district court appropriately awarded attorney fees under NRCP 68. *See Beattie v. Thomas*, 99 Nev. 579, 587-88, 668 P.2d 268, 273-74 (1983) (recognizing that NRCP 68 operated independently of former NRS 17.115). Moreover, the district court properly concluded that Schaffer incurred the fees and costs, including the costs of travel for depositions, *see Logan v. Abe*, 131 Nev. \_\_\_, \_\_\_, 350 P.3d 1139, 1142-43 (2015) (explaining that "NRCP 68 allow[s] a party to recover qualifying attorney fees and costs that were paid on its behalf by a third party"); *see also* NRS 18.005(15) (including "[r]easonable costs for travel and lodging incurred taking depositions and conducting discovery" among allowable costs), and the record demonstrates that the district court considered the factors set forth in *Beattie*, 99 Nev. at 588-89, 668 P.2d at 274, and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d, 31, 33 (1969).

Based on the foregoing, we affirm the district court's orders granting Schaffer summary judgment and awarding attorney fees and costs.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Douglas W. Herndon, District Judge  
Gerald I. Gillock & Associates  
Brauer Law Office  
Hall Jaffe & Clayton, LLP  
Eighth District Court Clerk