

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HERBERT GOFORTH, II,
INDIVIDUALLY AND AS HEIR OF THE
ESTATE OF HERBERT GOFORTH, III,
DECEASED; AND ROSA GOFORTH,
INDIVIDUALLY AND AS HEIR OF THE
ESTATE OF HERBERT GOFORTH, III,
DECEASED; AND HERBERT
GOFORTH, II, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF HERBERT GOFORTH, III,
DECEASED,
Appellants,
vs.
NEVADA POWER COMPANY; NV
ENERGY, INC.; SILVER MERGER SUB,
INC.; AND MIDAMERICAN ENERGY
HOLDINGS COMPANY,
Respondents.

No. 69350

FILED

FEB 28 2017

EMILY BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

This is an appeal from a grant of summary judgment, denial of a NRCP 56(f) motion, and award of costs. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Herbert Goforth, III, tragically died during a Nevada Power Company training exercise after falling approximately 75 feet.¹ Representatives of Goforth's estate ("the Goforths") brought claims against Nevada Power Company and related entities NV Energy, Silver Merger

¹We do not recount the facts except as necessary to our disposition.

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Sub, and MidAmerican Energy Holdings. The district court granted summary judgment in favor of the defendants.² The district court also denied the Goforths' NRCP 56(f) motion, finding further discovery would be futile. The district court subsequently awarded the related entities their costs as prevailing parties.

The issues before this court are whether the district court properly granted summary judgment, whether the district court abused its discretion by denying the Goforths' NRCP 56(f) motion, and whether the district court abused its discretion in awarding costs.

We first consider whether any questions of fact remain to preclude summary judgment. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Our review of the record reveals that the Goforths failed to produce any evidence connecting MidAmerican Energy Holdings to Goforth's death in this case. The Goforths assert MidAmerican Energy Holdings assumed the liabilities of Sierra Pacific Resource, but there is

²The district court held two hearings on the motion for summary judgment. Though the Goforths assert there were some procedural irregularities with the district court's grant of summary judgment, the district court was entitled to conduct further research before rendering a final decision. See EDCR 2.23(c). Furthermore, the Goforths adequately represented their position in their briefs and oral arguments before the district court.

not sufficient evidence in the record demonstrating either (1) Sierra Pacific Resource faces any liability or (2) MidAmerican Energy Holdings is independently liable in this case. Therefore, we affirm summary judgment as to the claims against MidAmerican Energy Holdings.

The Goforths also failed to produce evidence supporting necessary elements of the fraud claim. To establish fraud, a plaintiff must show the defendant made a false representation with knowledge or belief that the representation was false or made without a sufficient basis and intending for the plaintiff to rely on the representation. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004). The plaintiff must justifiably rely on the representation and suffer damage based on the reliance. *Id.* The Goforths have not identified evidence of specific representations made by Nevada Power Company or NV Energy to Goforth prior to training, nor evidence of Goforth's reliance on any representations. Therefore, we affirm the district court's grant of summary judgment as to the Goforths' fraud claim.

The Goforths' remaining claims against Nevada Power Company and NV Energy³ are barred by the Nevada Industrial Insurance Act ("NIIA"). Under the NIIA, "[t]he rights and remedies provided in chapters 616A to 616D, inclusive, of NRS for an employee on account of an injury by accident sustained arising out of and in the course of the employment shall be exclusive." NRS 616A.020. Employees' claims

³The Goforths fail to mention the claims against Silver Merger Sub in their appeal, and, therefore, we need not address them, and we necessarily affirm the district court's order related to this entity. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (this court need not consider arguments not adequately briefed nor cogently argued).

against an employer are not barred only if the employer “deliberately and specifically intended to injure them.” *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837, 840 (2000). “The mere fact that [the employer] had foreseen and expected that at some time in the future [an incident] would occur, though coupled with negligence, even gross negligence, in permitting the operation to continue. . . does not permit the conclusion that the event was not an accident.” *Kennecott Copper Corp. v. Reyes*, 75 Nev. 212, 215–16, 337 P.2d 624, 626 (1959). Under *Conway* and *Kennecott Copper*,⁴ the Goforths never provided any evidence in opposition to summary judgment to prove the wrongful death claim fails outside the scope of the NIIA. Here, there is no evidence that Nevada Power Company or NV Energy intended to cause the accident which ultimately caused Goforth’s death. Therefore, the district court did not err in granting summary judgment in this regard.

Next, we consider whether the district court erred by denying the Goforths’ NRCP 56(f) motion. We review a decision to deny a NRCP 56(f) motion to allow further discovery prior to deciding a summary judgment motion for an abuse of discretion. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011). A court may extend discovery when it appears “a party opposing the motion [for summary judgment]. . . cannot for reasons stated present by affidavit facts essential to justify the party’s opposition.” NRCP 56(f); *see also Nutton v. Sunset Station, Inc.*, 131 Nev. ___, ___, 357 P.3d 966, 975 (Ct. App. 2015) (stating the court must evaluate whether the case may succeed on its merits in

⁴In their briefs, the Goforths cited several secondary sources of authority that evaluate intentional conduct under a different standard. The Nevada authority is dispositive on this issue.

light of the evidence that has been disclosed and “might possibly be uncovered later in discovery”).

The district court denied the Goforths’ motion based on a finding that further discovery would be futile. We agree with the district court’s conclusion, as nothing indicates the discovery sought would have revealed distinctive facts to show Nevada Power or NV Energy specifically intended to harm Goforth. Therefore, we affirm the district court’s denial of the Goforths’ NRCP 56(f) motion.

Finally, we resolve whether the district court abused its discretion by awarding costs to Nevada Power Company, NV Energy, Silver Merger Sub, and MidAmerican Energy Holdings as the prevailing parties. This court reviews the district court’s award of costs for an abuse of discretion. *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998).

Having carefully considered the multiple arguments the Goforths raise with regard to the district court’s award, we conclude that only one is persuasive. While costs associated with photocopying may be recovered, Nevada law requires more documentation than just the date and cost of copying. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. ___, ___, 345 P.3d 1049, 1054 (2015). The party must provide “documentation substantiating the reason for each copy.” *Id.* Nevada Power Company, NV Energy, Silver Merger Sub, and MidAmerican Energy Holdings failed to provide such documentation in this case. Therefore, we affirm the district court’s award of costs except to those costs related to photocopies. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. James Crockett, District Judge
Dana Jonathon Nitz, Settlement Judge
Potter Law Offices
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Eighth District Court Clerk