IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAZAL CHASSON-FORREST,
Appellant,
vs.
COX COMMUNICATIONS LAS VEGAS, INC., D/B/A AND COX COMMUNICATIONS,
Respondent.

No. 70264

FILED

MAR 31 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

Appellant Mazal Chasson-Forrest appeals from a final judgment in a tort action. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Chasson-Forrest sued Respondent Cox Communications ("Cox"), alleging that Cox negligently maintained the lid of a cable vault located on a public sidewalk. Chasson-Forrest claimed that as a result of this negligence, she tripped over a hole in the lid and sustained significant injuries. Cox moved for summary judgment arguing that it could not be held liable because it did not have either actual or constructive notice of the hazardous condition (*i.e.*, the hole in the vault lid). The district court agreed and granted Cox's motion for summary judgment. Chasson-Forrest filed a motion for reconsideration, which was denied. The district court then awarded Cox attorney fees and costs.[1] This appeal followed.

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 as to any material fact [remains] and that the moving party is entitled to judgment as a

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

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matter of law.'" *Id.* (alteration in original) (footnote omitted) (quoting NRCP 56(c)). When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.*

Generally, in tort cases the question of negligence is a question of fact for the jury. *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 584, 216 P.3d 793, 798 (2009). In a slip and fall action, business owners are liable when their agents cause the hazard. *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993). However, when the hazard is caused by someone other than the business or its agents, "liability will lie only if the business had actual or constructive notice of the condition and failed to remedy it." *Id.*, 849 P.2d at 322-23. A defendant may have constructive notice of a hazardous condition if a reasonable jury could determine that based on the circumstances of the hazard the defendant should have known the condition existed. *See id.* at 323, 849 P.2d at 250-51. "Whether [the defendant] was under constructive notice of the hazardous condition is, in accordance with the general rule, a question of fact properly left for the jury." *See id.* at 322, 849 P.2d at 323; *see also Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1549, 908 P.2d 226, 230 (1995) (noting that the issue of constructive notice is "a question of fact which the jury generally decides").

In support of its motion for summary judgment, Cox asserted there is no evidence that the vault at issue was previously vandalized or otherwise damaged; and there is no evidence that other individuals suffered injuries as a result of a hole in the vault; therefore, it lacked constructive knowledge. In response, Chasson-Forrest presented the following evidence to demonstrate the existence of a genuine issue of material fact: (1) approximately 30% of cases against Cox involve hazardous vault lids; (2) Cox is aware that vault lid vandalism occurs; (3) because damage to vault lids does frequently occur and can be hazardous, Cox field technicians carry

extra vault lids while responding to field calls; and (4) expert opinion established that due to Cox's failure to systematically monitor vault lids, unsafe and dangerous conditions remain unreported and uncorrected.

When taking these facts in the light most favorable to Chasson-Forrest, she has demonstrated that there is a genuine issue of material fact regarding whether Cox had constructive notice[2] of the hole in the vault lid in question and a reasonable jury could find Cox had constructive notice, such that summary judgment was improper. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Cf. Sprague*, 109 Nev. at 250-51, 849 P.2d at 323.[3]

Accordingly, we

ORDER the judgment of the district court REVERSED.[4]

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Douglas Smith, District Judge
Persi J. Mishel, Settlement Judge

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[2]At the summary judgment stage, Chasson-Forrest did not allege that Cox had actual notice of the hazardous vault lid at issue.

[3]Because we reverse the order granting summary judgment, we need not address the order denying reconsideration.

[4]In light of our, we necessarily reverse the order awarding Cox attorney fees and costs. We take this opportunity to remind the district court that when awarding attorney fees and costs under either NRCP 68 or NRCP 11, the rules require specific. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, P.2d 268, 274 (1983) (listing the various factors a court must consider when awarding attorney fees or costs pursuant to NRCP 68); *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (listing the two part inquiry a court must engage in before awarding attorney fees pursuant to NRCP 11).

Further, we have considered all other arguments advanced by the parties and conclude that they are unpersuasive.

Morris Anderson
Ranalli Zaniel Fowler & Moran, LLC/Henderson
Eighth District Court Clerk