

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICIA SHINGLES,
INDIVIDUALLY; TINA GARCIA,
INDIVIDUALLY; AND PATRICE
JONES, INDIVIDUALLY,
Appellants,
vs.
BOMAS, A NEVADA CORPORATION,
Respondent.

No. 70047

FILED

MAR 22 2017

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

ORDER OF AFFIRMANCE

Appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Appellants Patricia Shingles, Tina Garcia, and Patrice Jones sued Respondent Bomas Bar and Grill ("Bomas") for negligence following a shooting. The incident began at Bomas and ended at Eagle Rock Gaming ("ERG"), a neighboring business that employed the appellants. ERG and Bomas share common owners, and Bomas' corporate offices are located in the suite next to ERG. However, they are otherwise independent businesses.

Bomas' suspended employee, Jimmy Keck, arrived at Bomas on April 12, 2012, armed with a shotgun, and proceeded to chase his intended victim from Bomas to ERG. Appellants were inside ERG.

Shingles was shot in the chest while blocking an entrance door in an attempt to allow Garcia and Jones to escape.¹

The district court granted Bomas' motion for summary judgment after finding Bomas did not have a duty to control the dangerous conduct of others nor did it have a special relationship with appellants that would give rise to a duty of care. On appeal, appellants argue that Bomas exercised sufficient control over ERG's premises to give rise to a special relationship and thus the district court erred by concluding Bomas did not owe them a duty of care.

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 matter of law.'" *Id.* (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). But, whether the defendant owes a duty of care is a question of law that may be resolved on a motion for summary judgment. *See id.*; *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011).

¹We do not recount the facts except as necessary to our disposition. However, we note that several of appellants' factual assertions are unsupported by the record provided to this court.

Under common law, there is no duty to control a third party's dangerous conduct, warn others, or protect another from a criminal attack. See *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280-81 (2009). An exception arises where the parties have a special relationship. *Id.* A special relationship exists where a party's ability to protect him - or herself is limited in some way because he or she has submitted to the control of the other party. See *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965, 968-69, 921 P.2d 928, 930 (1996). "In the absence of this degree of control, there is no special relationship giving rise to a duty of reasonable care." *Sparks*, 127 Nev. at 297, 255 P.3d at 245 (quoting *Grand Aerie Fraternal Order v. Carneyhan*, 169 S.W.3d 840, 853 (Ky. 2005)) (internal quotation marks omitted).

The supreme court established that "a landowner owes a duty to use reasonable care to keep the premises in a reasonably safe condition for use. However, the duty to protect from injury caused by a third person is circumscribed by the reasonable foreseeability of the third person's actions[.]" *Scialabba*, 112 Nev. at 969, 921 P.2d at 930. In *Scialabba*, the appellant was attacked by a man who had been hiding in a vacant apartment across the hall from appellant's apartment. *Id.* at 966-67, 921 P.2d at 929. The victim sued the construction company and alleged it was negligent for failing to lock the door to the vacant apartment. *Id.* at 967, 921 P.2d at 929. The district court granted defendant summary judgment. The supreme court reversed, holding that a duty existed because the company "exercised control over the premises and the alleged failure to lock the doors to the vacant apartments created a foreseeable risk of criminal activity and harm to

[the plaintiff].” *Id.* at 967-72, 921 P.2d at 921-33. Regarding the control element, the supreme court noted that the construction company had joint control over the premises, retained a master key, and—importantly—was responsible for locking the doors at night. *Id.* at 969-70, 921 P.2d at 931.

Here, we conclude Bomas did not exercise sufficient control over ERG’s corporate office to give rise to a special relationship. Bomas did not exercise control over ERG’s premises and appellants never submitted themselves to Bomas’ control. Specifically, appellants did not demonstrate that Bomas exercised joint control over the property, or that Bomas’ employees retained a key to the premises, or that Bomas’ use of the premises led Keck to shoot ERG employees. *See Scialabba*, 112 Nev. at 969-70, 921 P.2d at 930. Instead, the uncontroverted evidence demonstrates that Keck entered Bomas in order to shoot his coworker, and only entered ERG because his target fled there. Appellants next argue that because ERG and Bomas share common owners, Bomas necessarily exercised control over ERG. Appellants, however, failed to demonstrate how sharing common owners translates into Bomas exercising control over ERG’s employees or premises.


Additionally, even accepting appellants’ assertion that Bomas’ managers held at least one meeting in ERG’s corporate office, we conclude this does not establish Bomas owed appellants a duty of care as appellants did not demonstrate that this subjected the premises to Bomas’ control. Thus, we conclude that the district court did not err in

granting summary judgment as Bomas did not owe appellants a duty of care.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²We have considered the other arguments raised by appellants and conclude they are not cogently argued or supported by relevant authority and are therefore rejected. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding this court need not consider claims that are not cogently argued or supported by relevant authority).

An alternative ground exists for affirming summary judgment as to appellants Garcia and Jones. A plaintiff is required "to demonstrate that he or she has suffered some physical manifestation of emotional distress in order to support an award of emotional damages." *Betsinger v. D.R. Horton, Inc.*, 126 Nev. 162, 166, 232 P.3d 433, 436 (2010). Here, the district court found that appellants failed to even allege that they suffered physical manifestations of their emotional distress in the opposition to Bomas' motion for summary judgment. Accordingly, the district court found summary judgment was proper as to Garcia and Jones. On appeal, appellants assert they suffered physical manifestations, but failed to provide any record cites supporting these assertions. Accordingly, this court will not consider appellants' argument on appeal. See *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) (holding appellate courts "need not consider the contentions of an appellant where the appellant's opening brief fails to cite to the record on appeal."); NRAP 28(e)(1) (requiring every factual assertion be supported by a reference to the appeal appendix).

cc: Hon. Joseph Hardy, Jr., District Judge
Lansford W. Levitt, Settlement Judge
Anthony Paglia Injury Lawyer
Law Offices of Kenneth E. Goates
Eighth District Court Clerk