

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRE SYMEONIDIS, AN
INDIVIDUAL,
Appellant,
vs.
AMC, LLC, A LIMITED LIABILITY
COMPANY; LANTANA APARTMENT
PARTNERS, LLC, A FOREIGN
LIMITED LIABILITY COMPANY; AND
JSP LANTANA, LLC, A FOREIGN
LIMITED LIABILITY COMPANY,
Respondents.

No. 71072

FILED

DEC 11 2017

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

ORDER OF REVERSAL AND REMAND

Andre Symeonidis appeals from a district court order granting summary judgment. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Symeonidis was a tenant at Lantana Apartments (Lantana) in Las Vegas. He alleges that on July 13, 2013, at around 5:00 p.m., unknown assailants with swastika tattoos attacked him as he walked to his car. After pushing him to the ground, beating him, and robbing him, the assailants fled in a waiting getaway car. A friend drove Symeonidis to Summerlin Hospital where he was treated for his injuries. Almost a year later, Symeonidis sued Lantana for negligent security, asserting that Lantana had failed in its duty to keep the complex's common areas safe. Lantana moved for summary judgment on the following grounds: the criminal acts of unidentified assailants were the superseding and intervening cause of Symeonidis's injuries; the criminal acts were unforeseeable; and Symeonidis had no expert

to establish the standard of care. The district court granted Lantana's motion and Symeonidis appealed.¹

On appeal, Symeonidis challenges the district court's grant of summary judgment on three grounds: (1) the district court committed legal error when it applied the traditional view of foreseeability even though the Nevada Supreme Court expressly rejected that view in favor of the modern, totality-of-the-circumstances rule; (2) the court erred in finding that the assault on him was unforeseeable despite the significant history of crime at Lantana; and (3) the court erred in holding that he was required to have an expert witness to testify as to security.

This court reviews grants of summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.* The evidence and all reasonable inferences drawn from it must be viewed in a light most favorable to the nonmoving party. *Id.* And summary judgment is improper whenever a rational jury could return a verdict for the non-moving party. *Id.* at 731, 121 P.3d at 1031. To prove a negligent-security claim, a plaintiff must show that: "(1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injury; and (4) the plaintiff suffered damages." *Doud v. Las Vegas Hilton Corp.*, 109 Nev. 1096, 1100, 864 P.2d 796, 798 (1993).

First, we conclude that the district court employed the incorrect legal standard in determining whether the attack on Symeonidis was foreseeable and thus gave rise to a duty of care.

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

Foreseeability operates as “a predicate to establishing the element of duty[.]” *Dakis for Dakis v. Scheffer*, 111 Nev. 817, 820, 898 P.2d 116, 118 (1995). The supreme court addressed the test for foreseeability for establishing duty in negligent security cases in *Doud v. Las Vegas Hilton Corp.*² In *Doud*, a man was attacked when he entered his motor home, which was parked in the parking lot of the Las Vegas Hilton. 109 Nev. at 1098-1099, 864 P.2d at 797. In determining whether the attack on Doud was foreseeable and thus conferred a duty of care, the court identified two tests: prior similar incidents and totality of circumstances. *See id.* at 1102, 864 P.2d at 799-800. The court applied the totality-of-circumstances test, reasoning that the more modern approach “allow[s] a judge to look beyond the existence of ‘similar wrongful acts’ in determining the existence of a duty.” *Id.* at 1103, 864 P.2d at 800. The court has continued to apply the totality-of-circumstances test to negligent-security cases. *See Estate of Smith ex rel. Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. 855, 862, 265 P.3d

²*Doud* was superseded by NRS 651.015, the innkeepers’-negligence statute, enacted in 1995. Below, the district court concluded that NRS 651.015 does not apply to Lantana because it is an apartment complex. The parties do not raise the issue of whether NRS 651.015 applies to Lantana on appeal, and as a result, we will not address it. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n. 3, 252 P.3d 668, 672 n. 3 (2011). (providing that issues not raised on appeal are deemed waived). However, we note that in 2011, the Nevada Supreme Court analyzed NRS 651.015’s legislative history, and held that its approach to duty aligned with *Doud*’s totality-of-circumstances approach. *See Estate of Smith ex rel. Smith v. Mahoney’s Silver Nugget, Inc.*, 127 Nev. 855, 860, 265 P.3d 688, 692 (2011) (“[NRS 651.015]’s standard is akin to Nevada’s ‘totality of the circumstances’ approach established in *Doud*.”). We therefore utilize *Doud*’s totality-of-circumstances approach in resolving this appeal.

688, 693 (2011); *Scialabba v. Brandise Const. Co.*, 112 Nev. 965, 970, 921 P.2d 928, 931 (1996).

Below, the district court applied the prior-incidents rule instead of considering the totality of circumstances. It found that “[t]he only prior incidents at that property were minor break-ins and theft from cars . . .” and “[t]here had never been an attack like this by a skinhead gang or anyone else.” As is evident from that brief analysis, the court failed to consider other pertinent circumstances. Moreover, the district court did not take all the evidence in the light most favorable to nonmovant Symeonidis; instead, it adopted Lantana’s claims that the crimes at Lantana were “minor break ins and theft from cars,” despite contrary evidence Lantana itself provided. Thus, based on our de novo review of the record on appeal, we conclude that the district court erred in granting summary judgment on the element of duty.

Second, we consider the argument that the district court erred in concluding that the attack was so unforeseeable as to cut off causation. “[U]nlawful conduct can interrupt and supersede the causation between a negligent act and injury, [but] an unlawful act will not supersede causation if it was foreseeable.” *Anderson v. Mandalay Corp.*, 131 Nev. ___, ___, 358 P.3d 242, 248 (2015); *Doud*, 109 Nev. at 1105, 864 P.2d at 801. To determine whether an intervening cause is foreseeable, the court considers several factors including:

whether (1) the intervention causes the kind of harm expected to result from the actor's negligence, (2) the intervening event is normal or extraordinary in the circumstances, (3) the intervening source is independent or a normal result of the actor's negligence, (4) the intervening act or omission is that of a third party, (5) the intervening act is a wrongful act of a third party that would subject him to

liability, and (6) the culpability of the third person's intervening act.

Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 492, 215 P.3d 709, 725 (2009) (citing Restatement (Second) of Torts § 442 (1965)).

The district court also applied the above factors in concluding the skinheads' actions were unforeseeable. But it misapplied at least one of the three factors it considered. Rather than deciding whether the attack on Symeonidis was extraordinary or normal under the circumstances—for example, taking into account the history of crime at Lantana—it seemed to conclude that the crime itself was not normal. This conclusion does not address whether the attack was extraordinary in view of the circumstances existing at Lantana, and thus was unforeseeable. Symeonidis presented evidence that, viewed in the light most favorable to him, showed Lantana could have anticipated that criminals would take advantage of the lack of security on its premises to commit a daytime attack. Thus, based on our de novo review of the record, we conclude that there is a genuine dispute as to whether the skinheads' acts were foreseeable, so the district court erred in granting summary judgment on this ground.

Last, despite Lantana's assertions that expert testimony is required to establish duty and breach in negligent-security cases, the Nevada Supreme Court has considered such cases and did not require expert testimony. *Smith*, 127 Nev. at 863, 265 P.3d at 693; *Scialabba*, 112 Nev. at 970, 921 P.2d at 931 (1996); *Basile v. Union Plaza Hotel & Casino*, 110 Nev. 1382, 1384–85, 887 P.2d 273, 275 (1994); *Early v. N.L.V. Casino Corp.*, 100 Nev. 200, 204, 678 P.2d 683, 685 (1984). Thus, it was error for the district court to grant summary judgment simply because Symeonidis lacked an expert.

In conclusion, the grounds on which the district court granted summary judgment were based on errors of law, the court failed to consider the evidence in the light most favorable to the nonmovant Symeonidis, and Symeonidis demonstrated genuine issues of material fact. Accordingly we

ORDER the judgment of the district court REVERSED 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. Joseph Hardy, Jr., District Judge
Lewis Roca Rothgerber Christie LLP/Phoenix
Law Offices of Kenneth E. Goates
Eighth District Court Clerk