IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDEE WALKER,
Appellant,
vs.
CITY OF MESQUITE,
Respondent.

No. 73319

FILED

MAR 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brandee Walker appeals from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Appellant Brandee Walker suffered injuries when she fell off the top row of a small set of bleachers while attending her son's football game at a sports complex owned by respondent City of Mesquite. While standing on the top of the bleachers, Walker leaned on an unlocked fence gate behind the bleachers. The gate swung open and snagged her leg as she fell, which resulted in a wound that required numerous stitches.[1] Walker sued the City of Mesquite, alleging negligence and res ipsa loquitur. Mesquite moved for summary judgment on the basis of immunity, arguing that Walker failed to show Mesquite created or had notice of the potentially hazardous condition. The district court granted summary judgment in favor of Mesquite.

On appeal, Walker argues that summary judgment was improper because when the facts are viewed in a light most favorable to her, a jury could reasonably infer from the evidence that Mesquite created the

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

hazard. Mesquite counters that immunity properly bars Walker's claims because Walker failed to provide evidence that Mesquite created or had actual notice of the potential hazard, thus summary judgment was appropriate.

We review a district court's order granting summary judgment de novo, and will uphold summary judgment only where "the pleadings and 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." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation omitted). The nonmoving party must set forth specific genuine issues for trial, and cannot rely upon "gossamer threads of whimsy, speculation, and conjecture." NRCP 56(e); *Wood*, 121 Nev. at 732, 121 P.3d at 1031.

NRS 41.033(1)(b) prevents a plaintiff from bringing an action against a public entity for failure to discover a hazard, but does not provide immunity if the hazard was created by the entity, *see City of Las Vegas v. Pursel*, 110 Nev. 1235, 1237-38, 885 P.2d 557, 558 (1994), or if an entity has actual notice of the hazard but fails to act, *Chastain v. Clark Cty. Sch. Dist.*, 109 Nev. 1172, 1175, 866 P.2d 286, 288 (1993).

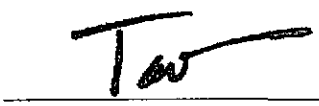
Here, Walker failed to present any evidence that Mesquite placed the bleachers against the fence, that Mesquite unlocked the gate, or that Mesquite had actual knowledge of any potentially hazardous condition.[2] *See Pursel*, 110 Nev. 1235, 1237-39, 885 P.2d 557, 558-59 (1994)

[2]While Mesquite admits that it placed the bleachers onto the field for the event that day and that only city employees possess gate keys, the undisputed evidence suggests that third-party parents and spectators may have moved the bleachers and unlocked the gate.

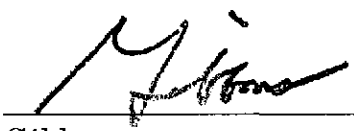
(concluding that the plaintiff was not entitled to recovery where the plaintiff failed to show that the hazard resulted from the city's negligent construction of a ramp rather than subsequent conditions of which the city was unaware); *Chastain*, 109 Nev. at 1176, 866 P.2d at 289 (recognizing immunity will apply unless the city has actual knowledge of the hazard). Therefore, Walker failed to meet her burden opposing summary judgment as no evidence existed showing Mesquite created or had actual knowledge of the hazard, and we conclude that summary judgment based upon NRS 41.033(1)(b) was proper.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

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[3]We note Walker also raised a claim of res ipsa loquitur in her complaint, but Walker failed to argue this point below and on appeal, and this court therefore need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating the appellate court need not consider arguments not adequately briefed, not supported by relevant authority, and not cogently argued); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

cc: Hon. Jerry A. Wiese, District Judge
Lansford W. Levitt, Settlement Judge
Clarkson & Associates, LLC
Bradley C. Harr & Associates
Marquis Aurbach Coffing
Eighth District Court Clerk