

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARTHA ESTRADA,  
Appellant,  
vs.  
STEAM MAXX CARPET &  
UPHOLSTERY CLEANING,  
Respondent.

No. 71256

**FILED**

DEC 26 2017

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

*ORDER OF REVERSAL AND REMAND*

Martha Estrada appeals from a district court order granting summary judgment in favor of respondent Steam Maxx Carpet & Upholstery Cleaning. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

A pipe broke in Martha Estrada's home, flooding the ground floor. Estrada called Steam Maxx to remove the water, and while its technician was present Estrada slipped and fell on the wet floor. Estrada sued Steam Maxx for negligence and vicarious liability, alleging Steam Maxx failed to properly attend to the floor cleanup and failed to protect Estrada from the slippery floors. Steam Maxx moved for summary judgment, and the district court granted the motion on the basis that there was no special relationship between the parties giving rise to a duty of care.<sup>1</sup>

On appeal, we consider whether the district court erred by concluding, as a matter of law, Steam Maxx owed no duty of care to

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

Estrada. We review the district court's decision de novo, and conclude summary judgment is proper only where 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. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In this case, we agree that the district court erred by granting summary judgment.

To support a negligence claim, the plaintiff must show that (1) the defendant owed them a duty of care, (2) the defendant breached that duty, (3) the breach caused the harm, and (4) the plaintiff suffered damages as a result. *See Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 296, 255 P.3d 238, 244 (2011). Negligence "is generally a question of fact for the jury," and Nevada's appellate courts are "hesitant to affirm summary judgment in negligence cases." *Id.* (internal quotations and citations omitted). Although the existence of a duty of care is a question of law for the court to determine, that determination may "require the jury to resolve predicate factual disputes upon which a determination of duty rests." RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 6 cmt. b (AM. LAW INST. 2010); *see also* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 40 cmt. e (AM. LAW INST. 2012) ("Whether or not a particular type of relationship supports a duty of care is a question of law for the court. If disputed historical facts bear on whether the relationship exists . . . the jury should resolve the factual dispute with appropriate alternative instructions.").

A special relationship generally arises where a party's ability to protect herself is limited in some way by submitting to the control of the other party. *Scialabba v. Brandise Const. Co., Inc.*, 112 Nev. 965, 969, 921 P.2d 928, 930 (1996). And, an actor who undertakes "to render services to

another which he should recognize as necessary for the protection of the other's person or things" may be liable for any physical harm arising from the actor's negligence in undertaking the services if either the actor's negligence increases the risk of harm or the plaintiff is harmed in relying upon the actor. RESTATEMENT (SECOND) OF TORTS § 323 (AM. LAW INST. 1965). Moreover, a "nonpossessory actor" who is present on the land may owe a duty of reasonable care "for conduct that creates risks to others on private property" if the actor is "engaged as an agent for the possessor and acting for the benefit of the possessor." RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 49 cmt. e (AM. LAW INST. 2012).

Below, the district court summarily concluded Steam Maxx had no duty of care because, as a matter of law, no special relationship could exist between the parties. This conclusion is not supported by the record before us. The facts, taken in the light most favorable to Estrada,<sup>2</sup> show that Estrada asked Steam Maxx to clear the water from her home, that Steam Maxx agreed to remove that dangerous condition, that the injury occurred on the work site, and that Estrada was relying on Steam Maxx's performance when she was injured. Under these facts, it was improper for the district court to conclude as a matter of law that the parties had no special relationship or that the facts could not give rise to a duty of care. Accordingly, we

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<sup>2</sup>Although Steam Maxx submitted an affidavit in support of its motion, we note the district court could not rely on that affidavit to grant summary judgment where the facts set forth therein were contested. *Cf. Clauson v. Lloyd*, 103 Nev. 432, 434-35, 743 P.2d 631, 633 (1987) (holding that a broad self-serving affidavit was not sufficient to support summary judgment).

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. Kerry Louise Earley, District Judge  
Carolyn Worrell, Settlement Judge  
Gazda & Tadayon  
Tanika M. Capers  
Eighth District Court Clerk