

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN MICHAEL DUNN,
Appellant,
vs.
WILLOWBROOK APARTMENT
TOWNHOMES,
Respondent.

No. 71876

FILED

APR 24 2018

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

ORDER OF AFFIRMANCE

John Michael Dunn appeals from a district court order granting summary judgment. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Dunn sued respondent Willowbrook Apartment Townhomes (Willowbrook)¹ for violating his Fourth Amendment rights by providing Las Vegas Metropolitan Police Department (LVMPD) with information and documents relating to him and the property he leased from Willowbrook under a false name. Willowbrook moved for summary judgment, which was granted. 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

¹Willowbrook Apartments is a fictitious name for defendant below, Olen Residential Realty Corp. Dunn incorrectly named Willowbrook Apartment Townhomes, but the parties did not address this mistake and Olen Residential Realty Corp. participated in litigation under the fictitious name.

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. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* The nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his claims. NRCP 56(e); *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

On appeal, Dunn argues that Willowbrook submitted fraudulent documents to support its motion for summary judgment, which necessarily creates a genuine issue of material fact, thereby defeating summary judgment. Specifically, Dunn challenges two subpoenas—one instructing a witness to appear to testify in court in 2015 and one instructing the same witness to appear and provide documents to a grand jury in 2014. Dunn alleges that the 2015 subpoena initially provided with Willowbrook’s motion for summary judgment could not have validated Willowbrook’s actions as the related court date was unknown when Willowbrook provided documents and information to LVMPD. Dunn also emphasized that Willowbrook only provided the 2014 subpoena after Dunn challenged the date on the 2015 subpoena. Contrary to Dunn’s assertions, these general allegations are insufficient to demonstrate the existence of a

genuine issue of material fact. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.²

Moreover, regardless of whether the subpoenas were valid, there is no evidence to suggest that Willowbrook conducted a search under the Fourth Amendment by responding to a subpoena, or providing documents or information to LVMPD because Dunn did not have a reasonable expectation of privacy in the documents and information in Willowbrook's control. *See State v. Taylor*, 114 Nev. 1071, 1079, 968 P.2d 315, 321 (1998) (describing the valid consent exception to unlawful searches where a third party has actual authority over or other sufficient relationship to the premises or effects sought to be inspected).³ Therefore,


²Dunn does request the opportunity to seek discovery relating to the subpoenas pursuant to NRCP 56(f). Our review of the record, however, indicates that Dunn failed to comply with NRCP 56(f) in providing an affidavit (or any specific description) stating what evidence discovery would yield that would generate genuine issues of material fact to defeat summary judgment. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669, 262 P.3d 705, 714 (2011).

³Because Dunn was leasing the apartment from Willowbrook under a false name, the district court also found that he did not have a reasonable expectation of privacy related to that transaction. *See U.S. v. Johnson*, 584 F.3d 995, 1002 (10th Cir. 2009) (connoting the difference in privacy expectations between using an alias and using another's identity); *cf. U.S. v. Lozano*, 623 F.3d 1055, 1062-64 (9th Cir. 2010) (O'Scannlain, J., concurring) (noting that the Ninth Circuit has not ruled on whether an alias undercuts an expectation of privacy). Dunn challenges this determination in his amendment to his informal brief. In light of our resolution of this matter, we decline to address this improperly raised issue as well as appellant's additional arguments from his memorandum to the court filed June 15, 2017. *See* NRAP 31(e) (stating that supplemental authorities "may not raise any new points or issues").

we agree with the district court's finding and conclusions of law that Willowbrook is entitled to judgment as a matter of law. See NRCP 56(c); see also *Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
John Michael Dunn
Smith Larsen & Wixom
Eighth District Court Clerk