

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TARIS GAY, INDIVIDUALLY,  
Appellant,  
vs.  
JERRY SCOTT, INDIVIDUALLY; AND  
CLOSE CUTS BARBER SHOP,  
Respondents.

No. 73022

FILED

APR 20 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Taris Gay appeals from a district court granting summary judgment against him. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Taris Gay is a hairstylist who worked as an independent contractor at Close Cuts Barber Shop, owned by respondent Jerry Scott. In 2013, Jevon Miles, a patron, entered the barbershop and confronted Gay, demanding money that Miles believed Gay had been given to hold for Miles. Gay stated he did not know of any such money. Miles briefly left the barbershop, and then returned and, without warning, punched Gay in the face and proceeded to beat him unconscious.

Gay thereafter sued Scott and Close Cuts Barber Shop (collectively "Scott") on claims of negligence, gross negligence, and premises liability. Gay claimed Scott owed a duty of care to Gay to keep the premises safe and that Scott breached that duty by exposing Gay to danger. Scott filed an answer and thereafter moved for summary judgment, arguing he owed no duty to Gay because the wrongful conduct was not foreseeable.<sup>1</sup> The district court granted the motion, and this appeal followed.

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

On appeal, Gay argues the district court incorrectly applied the standard for innkeeper liability to his claims and thereafter erroneously granted summary judgment. Gay further argues the district court erred by denying relief on the motion for summary judgment on the basis that Gay failed to file a NRCP 56-compliant affidavit. We disagree.

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 evidence 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.* But, general allegations and conclusory statements do not create genuine issues of fact. *Id.* at 730-31, 121 P.3d at 1030.

To succeed on a negligence claim, a plaintiff must show "(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), *superseded by statute on other grounds as stated in Estate of Smith v. Mahoney's Silver Nugget, Inc.*, 127 Nev. 855, 858-59, 265 P.3d 688, 691 (2011). Whether a duty of care exists is a question of law that we review de novo. *Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 777, 291 P.3d 150, 153 (2012). Landowners owe a duty of care to protect invitees from risks that exist on the property. *Foster*, 128 Nev. at 775, 291 P.3d at 155. Similarly, a proprietor must exercise "reasonable care to keep the premises in a reasonably safe condition for use." *Doud*, 109 Nev. at 1101, 864 P.2d at 799. A duty to prevent wrongful

conduct of a third party arises where the proprietor has “reasonable cause to anticipate the acts and the probability of injury resulting therefrom.”<sup>2</sup> *Id.* at 1102, 864 P.2d at 799.

Here, we conclude the district court applied the correct standard and did not err by concluding no evidence supported the existence of a duty of care. Specifically, no evidence suggests Scott had any reason to anticipate the wrongful conduct. For example, Gay did not show any history of similar events at Close Cuts, or other evidence that would suggest that Scott knew or should have known Miles could be dangerous. Although Gay presented a crime report for the surrounding area, this, alone, does not suggest that Scott had reason to anticipate this crime would be committed on Close Cuts premises, nor does Gay provide legal authority supporting his argument that crime in the general area makes the particular crime on the premises foreseeable. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (we need not consider arguments that are not adequately briefed or supported by legal authority). Therefore, on the facts before the court, Gay's claims fail as a matter of law.

Gay argues, however, that the district court erred by granting summary judgment shortly before discovery could be conducted, without granting a continuance under NRCP 56. Gay asserts that his counsel's affidavit attached to the opposition fulfilled the requirements of NRCP 56.


The record belies these arguments. To obtain a continuance on a motion for summary judgment, the opposing party must provide an affidavit pursuant to NRCP 56(f) that both explains why the party cannot


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<sup>2</sup>Although *Doud* ultimately dealt with the issue of innkeeper liability, that case set forth the standard for proprietor liability applicable here.

present the necessary facts to oppose summary judgment and how additional discovery will enable a party to demonstrate a genuine issue of material fact. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011); *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Gay did not provide a NRCP 56(f) affidavit and admitted to the district court that he failed to do so.<sup>3</sup> Moreover, the affidavit on which Gay now relies does not explain either why he could not present facts demonstrating a duty of care, or how additional time for discovery would enable him to obtain that evidence. We therefore conclude the district court did not abuse its discretion by determining Gay failed to move for a continuance and by granting the motion for summary judgment. *See Choy*, 127 Nev. at 872; 265 P.3d at 700 (we review for an abuse of discretion a district court's decision to grant or deny a continuance of a motion for summary judgment). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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<sup>3</sup>The context of the court's discussion with Gay's counsel below demonstrates the court misspoke by referencing NRCP 56(b) rather than NRCP 56(f).

cc: Hon. Linda Marie Bell, District Judge  
William C. Turner, Settlement Judge  
Law Office of Cory J. Hilton  
Bremer Whyte Brown & O'Meara, LLP/Las Vegas  
Eighth District Court Clerk