IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ELLIOTT, Appellant, vs. CITY CENTER VEER TOWERS DEVELOPMENT, LLC, Respondent.	No. 72239
MARK ELLIOTT, Appellant, vs. LVT OWNER, LLC, Respondent.	No. 72473

ORDER OF AFFIRMANCE

Mark Elliott appeals from district court orders granting respondent City Center Veer Towers Development, LLC's and respondent LVT Owner, LLC's renewed motions for summary judgment. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Mark Elliott sued City Center Veer Towers Development, LLC (Veer), and LVT Owner, LLC (LVT), alleging negligence for injuries caused by chemical fumes that entered his apartment from resurfacing work done on the rooftop pool deck. After many months of litigation, the district court granted Veer's and LVT's motions for summary judgment, finding that Veer owed no duty to Elliott, his claims against LVT were barred by the statute of limitations, and Elliott could not prove causation.[1]

Elliott now appeals, arguing that the district court: (1) erred in granting the motions for summary judgment, (2) erred in failing to grant his new counsel's oral request for continuance of the motion for summary

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

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judgment, (3) failed to evaluate his requests for accommodations in violation of the American Disabilities Act (ADA), and (4) erred in allowing his counsel to withdraw. We disagree.

First, Elliott argues that the district court erred in granting LVT's renewed motion for summary judgment because genuine issues of fact existed regarding his injuries and ownership of Elliott's unit or common area. LVT counters that Elliott's claim against it is barred by the statute of limitations and does relate back to the original complaint. LVT also argues that even if Elliott's claim did relate back, he failed to designate a causation expert to establish his negligence claim.

We review 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 evidence on file demonstrate that no genuine issue of material fact exists "and that the moving party is entitled to a judgment as a matter of law." *Id.* (internal quotation marks omitted). When deciding a summary judgment motion, all evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* To withstand summary judgment, 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 or her claims. NRCP 56(e); *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

Here, summary judgment was appropriate because the claims against LVT were barred by the statute of limitations and did not relate back to the date of the original complaint. An amended pleading to add a defendant "after the statute of limitations has run will relate back to the date of the original pleading . . . 'if the proper defendant (1) receives actual notice of the action; (2) knows that it is the proper party; and (3) has not been misled to its

prejudice by the amendment.'" *Costello v. Casler*, 127 Nev. 436, 440-41, 254 P.3d 631, 634 (2011) (quoting *Echols v. Summa Corp.*, 95 Nev. 720, 722, 601 P.2d 716, 717 (1979)); *see also* NRCP 15(c). Unless the opposing party will be disadvantaged, NRCP 15(c) is to be construed liberally. *Costello*, 127 Nev. at 441, 254 P.3d at 634.

NRS 11.190(4)(e) sets a statute of limitations for personal injury claims at two years. Here, Elliott's alleged injury occurred in April 2013, he filed his original complaint in April 2014, but he did not amend his complaint to add LVT as a defendant until December 2015. The statute of limitations precluded Elliott's claims against LVT as of April 2015. Further, Elliott was given notice that Veer assigned Elliott's unit to LVT in December of 2012, and he was directed to make all further rent checks payable to LVT. Thus, Elliott knew LVT was the owner of his unit well before the injury occurred and before he filed the original complaint. Additionally, summary judgment was appropriate because the claims against LVT did not relate back to the date of the original complaint. Elliott provided no evidence demonstrating any genuine issue of material fact regarding whether LVT received actual notice, knew it was a proper party, and would be prejudiced by the amendment.

But even if the claims against LVT did relate back to the original complaint, summary judgment was still appropriate because Elliott failed to disclose a required expert witness to establish causation. "[G]enerally, because an injury is a subjective condition, an expert opinion is required to establish a causal connection between the incident or injury and disability." *Grover C. Dils Med. Ctr. v. Menditto*, 121 Nev. 278, 287-88, 112 P.3d 1093, 1100 (2005) (internal quotation marks omitted). To assist the trier of fact, medical expert testimony regarding causation must be "stated to a reasonable degree of medical probability." *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005). And NRS 50.275 requires the

following: (1) the expert "be qualified in an area of scientific, technical or other specialized knowledge"; (2) the expert's "specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue"; and (3) the expert's "testimony must be limited to matters within the scope of [his or her specialized] knowledge." *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (internal quotation marks omitted). Here, Elliott failed to timely disclose any expert witness or treating physician to testify regarding causation. And all the untimely disclosed witnesses failed to meet expert-testimony standards set forth in NRCP 16.1(a)(2) and *Hallmark*. Further, none of those witnesses opined on causation. Since Elliott could not show causation, he failed to establish each element of his negligence claims. Thus, summary judgment was appropriate. *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) ("Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper.").

Therefore, we conclude that the district court did not err in granting LVT's motion for summary judgment because the claims were time-barred and Elliott could not establish causation.

Second, Elliott argues that the district court erred in granting Veer's renewed motion for summary judgment because genuine issues of fact existed regarding Veer's ownership interest in Elliott's unit or the common areas. Veer counters that it does not owe a duty to the plaintiff simply by owning other units in the building. It further argues that even if Elliott's claim did relate back, he failed to designate a causation expert to establish his negligence claim.

Summary judgment was appropriate because Elliott failed to establish that Veer owed a duty to him, and he failed to establish causation. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. In common-interest ownership

communities, "the association has the duty to provide for the maintenance, repair and replacement of the common elements, and each unit's owner has the duty to provide for the maintenance, repair, and replacement of his or her unit." NRS 116.3107(1). Further, an owner of a unit "is not liable, solely by reason of being a unit's owner, for an injury or damage arising out of the condition or use of the common elements." NRS 116.3111(1). Rather, "an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit's owner." NRS 116.3111(2).

Summary judgment was appropriate because Elliott failed to put forth any evidence that Veer owed a duty to him. As of December 2012, Veer owned only 11 of the 669 condominium units in the community and none of its personnel were involved in the homeowners' association. Further, as an owner of a unit, Veer cannot be liable for an injury arising from the condition or use of the community's common elements under NRS 116.3111.

Nevertheless, even if Veer did owe a duty, Elliott still failed to timely or properly disclose an expert witness to testify as to causation under NRCP 16.1. Therefore, because he failed to establish causation, an element of his claim, summary judgment was appropriate.

Next, we consider Elliott's additional arguments in favor of reversal and find them unpersuasive. First, Elliott argues that the court abused its discretion by failing to grant a continuance at the hearing on LVT's and Veer's dispositive motions so that his new attorneys could prepare substantive arguments.

A decision granting or denying a motion to continue is within the sound discretion of the district court. *Doleman v. State*, 107 Nev. 409, 416, 812 P.2d 1287, 1291 (1991). "[W]hen new counsel is engaged just prior to the trial date, the alleged lack of preparation on the part of such counsel is not

necessarily a ground for continuance, particularly where the party has been guilty of negligence, such as inexcusable delay in employing the new counsel." *Benson v. Benson*, 66 Nev. 94, 98-99, 204 P.2d 316, 318 (1949) (internal quotation marks omitted). Here, we conclude that the district court did not abuse its discretion in declining Elliott's oral motion for continuance at the hearing on Veer's and LVT's motions for summary judgment because the district court provided numerous extensions and opportunities for Elliott to conduct discovery and to oppose the dispositive motions. Therefore, we conclude the district court did not abuse its discretion in denying Elliott's request for a continuance.

Elliott also argues that the district court abused its discretion in allowing his former counsel to withdraw when he was not informed of the withdrawal, he did not have an opportunity to secure new counsel, and he did not know the status of discovery at that time. An attorney may withdraw as counsel of record upon a showing of good and sufficient cause with reasonable notice to the client at the discretion of the court. RPC 1.16; SCR 46; NRAP 46(e); EDCR 7.40(b). This court reviews a grant of a motion to withdraw as counsel for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). Here, Elliott's argument is waived because the record shows that Elliott failed to object below. *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."). Nevertheless, Elliott was not prejudiced by his counsel's withdrawal months before the scheduled date for trial, as he was notified of the withdrawal at the addresses he provided. Further, his counsel delayed filing the notice of entry of order granting withdrawal in order to

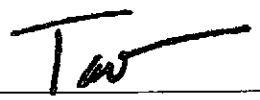
request two discovery extensions. Therefore, the district court did not abuse its discretion.[2]

Nevertheless, even if the court abused its discretion in granting the continuance or allowing Elliott's counsel to withdraw, summary judgment was appropriate because of the issues discussed above: discovery had long closed and Elliott still could not establish that Veer had a duty, his claims against LVT were time-barred, and he failed to disclose a causation expert witness. *See* NRCP 61 (stating that the court must disregard errors not affecting the substantial rights of the parties).

Based on the foregoing, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

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[2]Elliott also argues that the district court failed to properly evaluate his requests for disability accommodations under the ADA. This appeal is an inappropriate legal mechanism for Elliott's ADA claims. *See* 28 C.F.R. § 35.101(a) (2017) ("The primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations and whether discrimination has occurred . . . ."). Further, Elliott fails to point to anywhere in the record where the district court denied his request for an accommodation due to his disability. *Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. Moreover, his arguments are largely unsupported and not cogently argued. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider claims that are not cogently argued or supported by relevant authority). Therefore, we decline to address the merits of Elliott's ADA argument.

cc: Hon. Joseph Hardy, Jr., District Judge
William C. Turner, Settlement Judge
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