

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY COX, AN UNMARRIED
INDIVIDUAL,
Appellant,
vs.
HERITAGE GIZA, LLC, A NEVADA
BUSINESS ENTITY DOING BUSINESS
AS PYRAMID APARTMENTS,
Respondent.

No. 69198

FILED

FEB 10 2017

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a torts action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Respondent, a LLC controlling an apartment building, was ordered into a receivership in March 2012. In May 2013, appellant, who rented an apartment in respondent's building, discovered his apartment was flooded due to the water heater bursting in the apartment directly above his, causing damage to appellant's personal property. After being contacted by appellant, the receiver refused to reimburse appellant for any damages, and appellant then filed a complaint alleging negligence against respondent. The district court ultimately granted summary judgment in favor of respondent due to the prior appointment of the receiver, and this appeal followed.

On appeal, appellant argues that questions of fact remained regarding whether respondent owed him a duty of care which prevented summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that summary judgment is only appropriate when no questions of material fact remain and the moving

party is entitled to judgment as a matter of law); *see also Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009) (recognizing that a plaintiff must prove the existence of a duty of care to prevail on a negligence claim). We disagree. The district court order appointing the receiver clearly provided that the receiver would take “immediate and exclusive possession, custody and control” of the respondent business and would “operate and manage” the same, removing any duty of care from respondent.¹ *See Mazurick v. Chalos*, 569 N.Y.S.2d 174, 176 (App. Div. 1991) (concluding that a property owner whose property had been placed into receivership could not be held liable for property defects because, “[w]here an owner of property is no longer in possession and control of the property, and retains no right to reenter for purposes of inspection and repair, then [the owner] cannot be held liable for defects in the property”); *cf.* Restatement (Second) of Torts § 351 and cmt. a (1965) (providing that once a vendor parts with possession of the land, any duty of care it once had in regard to that land is transferred to the vendee), § 354(1) (providing that § 351 applies to any transfer of ownership of land other than by sale).

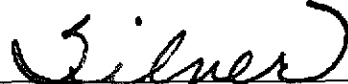
Based on the foregoing, we conclude that the district court properly granted summary judgment in favor of respondent because it owed no duty of care to appellant once the receiver was appointed.² *See*


¹Appellant’s argument regarding the timing of filing a claim against an entity that is in receivership does not change our conclusion that respondent owed appellant no duty of care.

²As to appellant’s argument that the law of the case doctrine prevented the district court from altering its prior interlocutory orders, that argument is meritless because the doctrine only applies to appellate court decisions. *See Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) (recognizing that the doctrine applies “when an appellate court decides a rule of law”).

Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (reviewing summary judgment orders de novo and providing that when the moving party does not bear the burden of persuasion at trial it may satisfy summary judgment by “submitting evidence that negates an essential element of the nonmoving party’s claim”). We therefore affirm the district court’s order.

It is so ORDERED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Persi J. Mishel, Settlement Judge
Hatfield & Associates, Ltd.
Hall Jaffe & Clayton, LLP
Eighth District Court Clerk

³Appellant also asserts that estoppel supports reversal of the district court’s order and that the receivership was temporary and that fact somehow affected respondent’s liability in this matter. We decline to address these arguments, however, as they were not raised below. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (holding that a point not raised in district court is waived and will not be considered on appeal).