IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SANDRA WILLIAMS, AN INDIVIDUAL; AND WAYNE WILLIAMS, AN INDIVIDUAL,
Appellants,
vs.
PARIS LAS VEGAS OPERATING COMPANY, LLC, D/B/A PARIS LAS VEGAS, A DOMESTIC LIMITED LIABILITY COMPANY,
Respondents.

No. 77788-COA

FILED

APR 23 2020

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

*ORDER OF AFFIRMANCE*

Sandra and Wayne Williams appeal a district court order granting a motion for summary judgment and an order awarding attorney fees and costs in a tort action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

In April 2016, Sandra Williams (Sandy) arrived in Las Vegas for a girls' trip with her daughter-in-law and her daughter-in-law's friend.[1] After checking in to the Paris, and dropping their bags off in their hotel rooms, the group had dinner and played a few slots. Sandy returned to her hotel room at the Paris to prepare for bed. Shortly after returning, Sandy entered her hotel bathroom and fell, injuring her wrist. Sandy and her husband, Wayne Williams, sued the Paris for negligence, premise liability, loss of consortium, and res ipsa loquitor. The Paris filed a motion for summary judgment, which the district court granted. In its order, the district court concluded that the Williamses failed to identify a dangerous

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

condition that caused Sandy to fall and that the Williamses failed to meet the elements of their res ipsa claim.

On appeal, the Williamses argue that the district court erred when it granted the Paris' motion for summary judgment because there were genuine issues of material fact as to the Williamses' negligence claims and res ipsa theory. Further, the Williamses argue that the district court abused its discretion by granting the Paris' motion for attorney fees because the Williamses' rejection of the offer of judgment was not grossly unreasonable. We disagree.

First, we consider the Williamses' arguments regarding the district court's order granting the Paris' motion for summary judgment. 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); *see also Costello v. Casler*, 127 Nev. 436, 439, 254 P.3d 631, 634 (2011). 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 judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact, and the nonmoving party must present specific facts demonstrating the existence of a genuine factual issue supporting their claims. *Id.* at 731, 121 P.3d at 1030-31.

*Traditional claims of Negligence and Premise Liability*

The Williamses contend that they presented substantial evidence that the Paris breached its duty to ensure that its room was reasonably safe and free of dangerous conditions by failing to clean, inspect, and maintain the floors of its hotel room. Specifically, the Williamses

contend that there are triable issues of fact over the condition of the floor and that the Paris fails to present contradictory evidence that the floor was safe or free of dangerous conditions. The Paris counters that the Williamses failed to meet the elements of breach and causation because they rely on conclusory statements and general allegations that the floor was slippery. The Paris further contends the Williamses failed to present evidence of a dangerous condition.

Negligence requires that the plaintiff establish the defendant owed the plaintiff a duty of care, "the defendant breached that duty," the breach caused the plaintiff injury, and that injury resulted in damages. *Sadler v. Pacficare of Nev., Inc.*, 130 Nev. 990, 995, 340 P.3d 1264, 1267 (2014). In a premises liability case, when a foreign substance on a floor causes an individual to slip and fall, liability will lie when the owner or one of its agents caused the substance to be on the floor. *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993). But if the foreign substance on the floor results from actions of a person aside from the owner or its employees, liability will only lie if the business had actual or constructive notice of the condition and failed to remedy it. *Id.* at 250, 849 P.2d at 322-23.

Here, the Williamses fail to establish that the Paris breached its duty by improperly maintaining, cleaning, and inspecting the bathroom floor. Sandy herself testified that there was no liquid or foreign substance on the floor and that both her feet and the floor were dry. The Williamses' own expert report states that objective slip resistant testing indicated a slip resistance surface when dry. While this expert report postulates that a foreign substance could make the floor slippery, neither the report nor the Williamses present evidence of what that foreign substance might be.

Additionally, the Williamses argue that the Paris' cleaning protocol might be inadequate and leave behind residue from bathroom soaps or oils. To support this allegation, the Williamses aver that because the Paris' representative of housekeeping, Laura Mengel, testified that the Paris housekeeping staff do not use a cloth to clean the bathtub, the cloth used to clean the floor would not be abrasive enough to remove contaminants. While Mengel testified that the instruments used to clean bathroom floors are insufficient to clean bath tubs, she did not testify that the instruments used to clean bathroom floors are insufficient to clean bathroom floors.

The Williamses argue that the Paris failed to present evidence that the floor was free of contaminants or in an otherwise safe condition. However, the Williamses misconstrue the burden of proof. Under a traditional theory of negligence, a defendant does not bear the burden of proving they acted properly. Accordingly, even when viewing the evidence in a light most favorable to the Williamses, they fail to present evidence that the Paris breached its duty by improperly maintaining, cleaning, or inspecting the bathroom.

*Res Ipsa Loquitor*

Next, the Williamses claim the district court erred by granting the Paris' motion for summary judgment because a "heel-slip fall" does not typically occur on a slip-resistant floor outside someone's negligence. The Paris contends the district court did not err because the Williamses failed to show that a slip-and-fall is not the type of accident that would ordinarily occur in the absence of someone else's negligence and that the bathroom was under the exclusive control of the Paris.

To infer negligence under res ipsa loquitur, the plaintiff must show: the event is of a kind which ordinarily does not occur in the absence

of someone else's negligence, the event is caused by an agent or instrumentality within the exclusive control of the defendant, and the event could not be due to any voluntary action or contribution on the part of the plaintiff. *Woosley v. State Farm Ins. Co.*, 117 Nev. 182, 188-89, 18 P.3d 317, 321 (2001). For res ipsa loquitor to apply, a defendant must have superior knowledge or be in a better position to explain the accident. *Id.* at 189, 18 P.3d at 321. If the plaintiff meets these elements, "the burden shifts to the defendant to show that something other than its negligence caused the accident." *Id.*

Here, the Williamses fail to meet the elements of res ipsa loquitor. The Williamses contend that Sandy's "heel-slip" fall on a slip-resistant floor is the type of accident that does not ordinarily occur in the absence of someone's negligence. However, as the district court concluded, while "a slip and fall is not the type of accident that would not ordinarily occur in the absence of someone else's negligence," here the Williamses could not prove the instrumentality, nor that it was under the Paris' exclusive control. Further, the Williamses could not prove that the Paris' negligence was greater than Sandy's or that the Paris was in a position of superior knowledge. Thus, the district court did not err by granting the Paris' motion for summary judgment. Accordingly, we affirm the district court's order.

*Attorney Fees*

Next, we consider the Williamses' argument that the district court abused its discretion by awarding the Paris attorney fees because the Williamses' rejection of the offer of judgment was not grossly unreasonable. Specifically, the Williamses argue the district court's evaluation of the *Beattie* factors was arbitrary and capricious because the district court failed

to consider the costs incurred by the Williamses. In response, the Paris argues that the district court did not abuse its discretion because the district court properly considered the *Beattie* factors.

Under NRCP 68, a party may recover attorney fees if the other party rejects an offer of judgment and fails to obtain a more favorable outcome. In *Beattie,* the supreme court set out four factors that must be considered when determining whether to award attorney fees under NRCP 68: whether the plaintiff's claim was brought in good faith; whether the defendant's offer of judgment was reasonable and in good faith in both timing and amount; whether the plaintiff's decision to reject the offer and proceed was grossly unreasonable or in bad faith; and whether the fees sought by the offeror are reasonable and justified. *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

We review a district court's application of the *Beattie* factors for an abuse of discretion. *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 423, 997 P.2d 130, 136 (2000). "Such an abuse occurs when the court's evaluation of the *Beattie* factors is arbitrary or capricious." *Frazier v. Drake,* 131 Nev. 632, 642, 357 P.3d 365, 372 (Ct. App. 2015). "Although explicit findings with respect to [the *Beattie*] factors are preferred, the district court's failure to make explicit findings is not a per se abuse of discretion." *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001). "If the record clearly reflects that the district court properly considered the *Beattie* factors, we will defer to its discretion." *Id.* at 13, 16 P.3d at 428-29.

We conclude the district court did not abuse its discretion when awarding attorney fees under NRCP 68. Although the district court's written order made no express findings as to the first and third *Beattie*

factors, "[t]he district court need not . . . make explicit findings as to all of the factors where support for an implicit ruling regarding one or more of the factors is clear on the record." *Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994). The court specifically stated it believed the Williamses brought their claims in good faith, the offer of judgment was made in good faith, that it was reasonable in timing and amount, and that the fees incurred by the Paris were reasonable. The Williamses contend that their rejection of the offer was not grossly unreasonable because they would have netted $0 when factoring in their own litigation costs. However, the district court noted that the offer came after the close of discovery and after the motions for summary judgment had been filed. While the Williamses may have wanted to net more than $0 in recovery, the cost of their litigation is not an explicit factor the district court must consider, and the Williamses have not shown how it was an abuse of discretion to not consider it in this case.

Therefore, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Kemp, Jones & Coulthard, LLP
Messner Reeves LLP
Lemons, Grundy & Eisenberg
Eighth District Court Clerk