

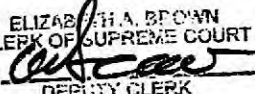
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CECILIA ANDERSON,  
INDIVIDUALLY,  
Appellant,  
vs.  
HOOTERS GAMING CORPORATION,  
D/B/A HOOTERS CASINO HOTEL;  
AND HILV FEE LLC, A FOREIGN  
CORPORATION,  
Respondents.

No. 80050-COA

FILED

MAY 27 2021

ELIZABETH A. BEGAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cecilia Anderson appeals from a district court order granting a motion for summary judgment in a tort action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.<sup>1</sup>

Anderson sued the owner and operator of the Hooters Casino Hotel (the Casino), respondent HILV Fee, LLC, and its franchisor, respondent Hooters Gaming Corporation (collectively referred to herein as HILV), asserting claims for negligence/premises liability and negligent hiring and supervision. For support, Anderson alleged that when she was a guest at the Casino, she sat on a stool, which broke and thereby caused her to fall and sustain injuries.

Following the close of discovery, HILV moved for summary judgment, asserting that video surveillance footage refuted Anderson's

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<sup>1</sup>Although Judge David M. Jones signed the order appealed from, Judge Kathleen E. Delaney heard and orally ruled on the matter and presided over the underlying proceeding.

allegation that the stool broke because the footage showed that she tipped the stool over when she attempted to sit on it. Thus, HILV maintained that Anderson could not establish a breach of the duty of care that caused her injuries for purposes of her negligence/premises liability claim. As to Anderson's negligent hiring and supervision claim, HILV argued that Anderson lacked any evidence to show that its employees committed an act of negligence, much less that it was negligent in its hiring or supervision of any of them. The district court agreed with HILV on both points and further found that a HILV maintenance engineer examined the stool and determined that it was in good working order, that Anderson lacked a liability expert to address whether the stool was broken or improperly maintained, and that she failed to identify any hazardous condition created by HILV that caused her to tip the stool over when she attempted to sit on it. As a result, the district court granted HILV's motion for summary judgment, and based on that decision, the court also denied as moot motions to reopen discovery and to hold HILV's counsel, Janet C. Pancoast, in contempt, which Anderson had filed earlier in the proceeding. 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 evidence on file demonstrate that no genuine dispute 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.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731,

121 P.3d at 1030-31. Discovery matters are within the district court's sound discretion, and this court will not disturb a district court's discovery ruling absent a clear abuse of discretion. *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 136 Nev. 221, 224, 467 P.3d 1, 4 (Ct. App. 2020).

On appeal, Anderson initially challenges the district court's determination that she failed to establish the breach and causation elements of a negligence or premises liability claim. *See Foster v. Costco Wholesale Corporation*, 128 Nev. 773, 777, 291 P.3d 150, 153 (2012) (listing breach of the duty of care and causation as elements of a negligence or premises liability theory). Anderson does so by disputing how the incident occurred, whether HILV satisfied its duty to preserve the stool, *see Bass-Davis v. Davis*, 122 Nev. 442, 450, 134 P.3d 103, 108 (2006) (recognizing that "the prelitigation duty to preserve evidence is imposed once a party is on 'notice' of a potential legal claim"), whether spoliation sanctions were warranted, and whether she needed a liability expert if HILV failed to preserve the stool. In raising these issues, Anderson relies on the video surveillance footage of the incident, presenting various arguments with respect to its content, quality, authenticity, and completeness.<sup>2</sup>

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<sup>2</sup>Anderson also asserts that the video surveillance footage does not include a timestamp, which HILV acknowledged below, and she asserts that it is therefore inadmissible because it violates certain of the Surveillance Standards for Nonrestricted Licensees adopted by the Chair of the Nevada Gaming Control Board pursuant to Nevada Gaming Regulation (NGR) 5.160(2). *See* NRCF 56(c)(2) (permitting a party to oppose summary judgment on grounds that "a fact cannot be presented in a form that would be admissible in evidence"). But the NGR standards do not govern the admissibility of video surveillance footage in Nevada's courts. *See* NGR 5.160(2) (explaining that the standards were adopted to assist the licensee

On March 2, 2021, this court directed the Clerk of the Eighth Judicial District Court to transmit a copy of the footage, which was attached as an exhibit to HILV's summary judgment motion and relied on by the district court in granting the same, to this court. But the clerk subsequently filed a notice with this court indicating that a copy of the footage was not submitted to the district court's evidence vault and that the district court does not have a copy of it. HILV also filed a notice with this court on March 10, 2021, which referenced this court's March 2 order, indicated that the district court apparently does not have the footage, and explained that although HILV also submitted a copy of the footage to the discovery commissioner, she has since returned it.<sup>3</sup>

Anderson, as the appellant in this matter, is responsible for ensuring that an adequate trial court record is prepared for this court's review. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603,

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and state in safeguarding the licensee's assets; in deterring, detecting, and prosecuting criminal acts; and in maintaining public confidence in the integrity of licensed gaming in Nevada). And Anderson does not otherwise identify any legal authority that provides that video surveillance footage is inadmissible in Nevada's courts if it does not include a timestamp. Thus, we need not address this assertion. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by relevant legal authority).

<sup>3</sup>Although HILV indicated that it would provide the copy of the footage that it apparently received from the discovery commissioner to this court upon request, we cannot consider materials that have not been properly made part of the record on appeal. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We have no power to look outside the record of a case." (internal quotation marks omitted)).

172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared). Although she was served with this court's March 2 order and copied on HILV's March 10 notice, Anderson has not filed anything in this court in response, and a review of the Eighth Judicial District Court's docket sheet reflects that she has not moved that court to correct or modify the record. See NRAP 10(c) ("If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly.").

As a result, we must conclude that Anderson has failed to satisfy her burden with respect to the trial court record, and we therefore presume that the missing footage supports the district court's determination that she failed to establish the breach and causation elements of her negligence and premises liability theories.<sup>4</sup> See *Cuzze*, 123

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<sup>4</sup>In arguing that HILV failed to preserve the stool, Anderson asserts, among other things, that it placed the stool back into service shortly after the incident. Reference to the video surveillance footage is unnecessary to confirm that the stool was placed back into service since the HILV incident report in the record confirms this happened. Nevertheless, the incident report includes several photographs of the stool that appear to have been taken several hours after the incident. See *Burlington N. & Sante Fe Ry. Co. v. Grant*, 505 F.3d 1013, 1032-33 (10th Cir. 2007) (rejecting an argument that a party failed to preserve evidence such that spoliation sanctions were warranted, reasoning that the alleged spoliator preserved the evidence by extensively documenting its condition). Rather than specifically disputing whether HILV satisfied its duty to preserve the stool by documenting its condition in this manner, Anderson simply asserts that the maintenance engineer mishandled or tampered with the stool immediately after the incident. And because Anderson relies on the video surveillance footage in making this assertion, relief is unwarranted for the reason discussed above.

Nev. at 603, 172 P.3d at 135 (explaining that we necessarily presume that materials missing from the trial court record support the district court's decision). Consequently, Anderson has not demonstrated that any genuine dispute of material fact exists to prevent summary judgment on her negligence/premises liability claim. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

The same is true of Anderson's negligent hiring and supervision claim because she does not dispute the district court's finding that she failed to provide evidence to support her claim or otherwise argue or explain how HILV was negligent in the hiring and supervision of any of its employees. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived); *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Nevertheless, Anderson raises various constitutional challenges and procedural issues that she contends precluded the entry of summary judgment on both her negligence/premises liability and negligent hiring and supervision claims.

For example, Anderson argues that the district court violated her right to a jury trial under the Seventh Amendment to the United States Constitution by entering summary judgment against her. But this argument lacks merit because there is no right to a jury trial where, as here, summary judgment was proper in the absence of a genuine dispute of material fact. *See Etalook v. Exxon Pipeline Co.*, 831 F.2d 1440, 1447 (9th Cir. 1987) ("The very existence of a summary judgment provision demonstrates that no right to a jury trial exists unless there is a genuine issue of material fact suitable for a jury to resolve."); *see also Talor v. Colon*,

136 Nev., Adv. Op. 50, 482 P.3d 1212, 1215 (2020) (applying *Etalook* to reject a challenge to Nevada’s anti-SLAPP statute, which was based on the right to a jury trial under the Nevada constitution). Anderson also asserts that her rights under the First and Fourteenth Amendments to the United States Constitution to free speech, due process, and equal protection were violated because she was cut off from presenting her arguments on certain points and discriminated against based on her pro se status. We decline to consider these issues, however, as Anderson does not support them with any explanation of what arguments she was prevented from making,<sup>5</sup> how they would have changed the outcome of the underlying proceeding, or how she was treated differently from HILV, much less any other litigant. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

As to the procedural issues, Anderson contends that summary judgment was improper on grounds that HILV’s motion was prematurely filed within less than 30 days after the close of discovery and at a time when a pretrial conference and trial had been scheduled. This contention fails, however, because “a party may file a motion for summary judgment *at any time until 30 days after the close of all discovery*,” NRCP 56(b) (emphasis added), and Anderson has not identified any discovery requests that remained to be propounded. Instead, Anderson essentially argues that she was unable to complete discovery because HILV did not provide complete responses to her discovery requests. But in making this argument,

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<sup>5</sup>We recognize that Anderson asserts elsewhere in her brief that the discovery commissioner posed a question to her and did not permit her to answer it, but her assertion is belied by the transcript from the relevant proceeding.

Anderson largely relies on the missing video surveillance footage, which we must presume supports the district court's decision, *see Cuzze*, 123 Nev. at 603, 172 P.3d at 135, and she has not otherwise identified anything in the record that shows that HILV withheld evidence.

Thus, given the foregoing, we conclude that the district court did not err by granting summary judgment for HILV on Anderson's negligence/premises liability and negligent hiring and supervision claims. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>6</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

Although the Honorable Bonnie Bulla, Judge, was the discovery commissioner during the early stages of the underlying proceeding, she did not have any involvement in any decision relevant to the issues presented on appeal, and, therefore, Judge Bulla participated in the decision of this matter on appeal.



cc: Hon. David M. Jones, District Judge  
Hon. Kathleen E. Delaney, District Judge  
Cecilia Anderson  
Cisneros & Marias  
Eighth District Court Clerk