

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN FRIESE, AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF KEITH FRIESE,

Appellant,

vs.

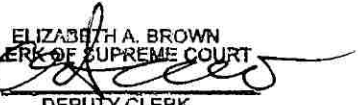
FUN CITY LAS VEGAS, LLC, A  
DOMESTIC LIMITED LIABILITY  
COMPANY; STRIP GUN CLUB, LLC, A  
DOMESTIC LIMITED LIABILITY  
COMPANY; CHETAK DEVELOPMENT,  
A DOMESTIC CORPORATION; AND  
CORNERSTONE COMPANIES, A  
DOMESTIC CORPORATION,

Respondents.

No. 83372

FILED

JUN 29 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting summary judgment in a wrongful death action. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

In this appeal, appellant Stephen Friese challenges the district court's order granting summary judgment in favor of respondents. Friese's brother, Keith Friese, was shot and killed by Spencer Trevathan. Friese filed a complaint as the personal representative of the estate of Keith alleging negligence, negligent hiring, training, and supervision, and negligent infliction of emotional distress. The district court subsequently granted respondents' motion for summary judgment finding that Friese could not seek damages under NRS 41.100 and was limited to damages available to personal representatives under NRS 41.085(5) because Friese was not an heir under the statute, Friese failed to present evidence to

establish any recoverable damages, and respondents did not owe a duty of care to Keith. This appeal followed.

This court reviews the district court's legal conclusions and grant of summary judgment de novo. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Summary judgment is appropriate when the pleadings and other evidence "demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (alteration in original) (quoting former NRCPC 56(c) (2005)). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.*

Friese argues that he is an heir for the purposes of NRS 41.085 because his mother relinquished any interest in Keith's estate, such that Friese would be entitled to succeed as heir. We need not reach this issue because the complaint explicitly provided that Friese filed the complaint as the personal representative of Keith's estate. Although Friese attempted to amend his complaint through a countermotion filed in conjunction with his opposition to the motions for summary judgment, Friese did not seek leave to amend until after the deadline to amend pleadings expired. Moreover, Friese did not seek to amend the complaint to add himself as the heir, rather the proposed amended complaint sought to add Friese's mother as a plaintiff, even though she testified that she did not want to participate in the suit and the applicable statute of limitations had run. Based on these considerations, we affirm the district court's holding limiting Friese to damages available to personal representatives under NRS 41.085(5) and hold that the district court did not abuse its discretion in denying the

countermotion for leave to amend. *See Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973) (“A motion for leave to amend is addressed to the sound discretion of the trial court and its action in denying the motion should not be held to be error unless that discretion has been abused.”).

Friese also argues that he may assert both wrongful death claims under NRS 41.085 and survivorship claims brought under NRS 41.100. In *Alsenz v. Clark County School District*, we held that NRS 41.100 does not apply when an estate’s representative sues for wrongful death. *See* 109 Nev. 1062, 1066, 864 P.2d 285, 287 (1993) (“By its express terms, NRS 41.100 does not apply when the estate’s representative sues for wrongful death . . . .”). Friese contends that the negligence causes of action in his complaint are Keith’s surviving claims which are distinguishable from the wrongful death claims. We find this contention unpersuasive. In his complaint, Friese explicitly sought to recover damages arising from Keith’s death under every cause of action. Therefore, based on the language in the complaint, Friese’s claims resonantly sound in wrongful death. Since each of Friese’s claims seek damages recoverable under NRS 41.085(5), NRS 41.100 does not apply. Accordingly, the district court correctly found that Friese may not recover damages under NRS 41.100.

Finally, we affirm the district court’s findings regarding Friese’s failure to present evidence establishing any recoverable damages and any duty owed to Keith. The record is devoid of evidence of medical expenses, funeral costs, or other special damages recoverable under NRS 41.085(5). Moreover, the record supports the district court’s finding that Trevathan was not acting within the scope of his employment when the incident occurred. Therefore, we agree that respondents are not responsible

for Trevathan's conduct and did not owe Keith a duty of care. *See Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223, 925 P.2d 1175, 1179 (1996) (explaining that an employee must be acting within the scope of their employment in order to impose vicarious liability against an employer). Based on the foregoing, we conclude that the district court did not err by granting summary judgment in favor of respondents, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Erika D. Ballou, District Judge  
Persi J. Mishel, Settlement Judge  
Arnold & Itkin, LLP/Houston  
The702Firm  
Claggett & Sykes Law Firm  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Law Offices of Eric R. Larsen  
Dennett Winspear, LLP  
Lincoln, Gustafson & Cercos  
Eighth District Court Clerk