

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD REED,
Appellant,
vs.
JAMES SHANE AND DAWN SHANE,
Respondents.

No. 38082

FILED

NOV 21 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court granting partial summary judgment as to appellant Richard Reed's negligent infliction of emotional distress ("NIED") claim.

Richard was walking his two poodles when a rottweiler owned by respondents James and Dawn Shane attacked and killed one of his poodles and injured Reed's hand. Reed filed a complaint against the Shanes alleging, among other things, NIED. The Shanes filed a motion for partial summary judgment as to Reed's NIED claim, and the district court granted the motion. The parties eventually settled all claims except the NIED claim, and the district court entered an order of dismissal with prejudice.

This court's review of an order granting summary judgment is de novo.¹ Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.² "A genuine

¹Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

²NRCP 56(c).

issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party.”³

Reed contends that the district court erred by granting partial summary judgment on Reed’s NIED claim. Reed contends that he was not a bystander but instead was an actual victim of the attack who sustained physical as well as mental injuries. Regardless of his status as a victim, Reed seeks damages for emotional distress resulting from observing the attack on his dog. As to these damages, he is a bystander.

“A bystander who witnesses an accident may recover for emotional distress in certain limited situations.”⁴ To recover, a bystander must prove that he (1) was located near the scene; (2) was emotionally injured by the contemporaneous sensory observance of the accident; and (3) was closely related to the victim.⁵ Bystanders must usually be related by blood or marriage to the victim.⁶ NRS 193.021 defines a dog as personal property. In Smith v. Clough,⁷ this court held that a party cannot recover for emotional distress arising from property damage.

In this case, Reed cannot recover NIED damages for witnessing the loss of his dog, because the dog, although a cherished pet, was personal property under the law. Accordingly, we conclude that the

³Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

⁴Grotts v. Zahner, 115 Nev. 339, 340, 989 P.2d 415, 416 (1999).

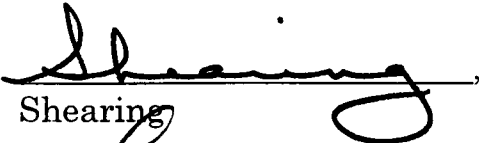
⁵Id.


⁶See id. at 341, 989 P.2d at 416.


⁷106 Nev. 568, 569-70, 796 P.2d 592, 593-94 (1990).

district court did not err in granting partial summary judgment as to Reed's NIED claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Robert G. Giunta
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Clark County Clerk