

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAKAYA KING, AN INDIVIDUAL,
Appellant,
vs.
GO GLOBAL REALTY; STEVEN FANG;
ANITA CHOW; AND ALCHEMY
INVESTMENTS LLC,
Respondents.

No. 86149-COA

FILED

JUN 10 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Takaya King appeals from a final order in a civil matter. Eighth Judicial District Court, Clark County; Anna Albertson, Judge.

King rented a residential property from respondents Steven Fang and Anita Chow. Respondent Go Global Realty (Go Global) acted as the property manager for that residence. The lease agreement between King, Fang, and Chow ran from January of 2021 until January 31, 2022. Pursuant to the lease agreement, King agreed to provide notification of water leaks or damages within 24 hours of such an occurrence and, as relevant to this matter, Fang and Chow agreed to be responsible for costs associated with plumbing problems not caused by King. King also agreed to allow access to the residence for reasonable purposes and to permit vendors to make necessary repairs to the residence.

On December 8, 2021, King notified Go Global of a leak and associated water damage in the residence. Go Global retained plumbing

services that day, and the plumber stopped the leak. A technician for a restoration company also came to the property that day and set up a dehydration unit within the residence. The restoration company employee returned to the residence the following day to continue the restoration efforts but King had placed the dehydration unit outside and she would not let repair workers into the residence. Fang and Chow offered to pay for King to reside in a hotel while the restoration company completed the repairs but King refused their offer. King also refused to permit a second restoration company to have access to the residence.

Fang and Chow subsequently sold the property to respondent Alchemy Investments LLC. Alchemy informed King that it had assumed the lease agreement but that it would not renew it and that her lease would therefore terminate on January 31, 2022. King thereafter remained on the property until approximately March 7, 2022, but she did not pay rent for January through March of that year.

King subsequently filed a complaint naming as defendants Fang, Chow, Go Global, and Alchemy (respondents). In her amended complaint, King contended that she was exposed to mold and asbestos as a result of the water damage and resulting repairs and that she notified Fang and Chow on December 8, 2021, that she had been exposed to those contaminants and needed substitute housing. King further alleged that she suffered medical problems as she was exposed to mold and asbestos after respondents failed to fix the problems with the residence. King also stated that respondents failed to supply essential items and services as required by the lease agreement and sought to evict King in retaliation for her requests to repair the residence. Based on those allegations, King

contended that respondents were liable for money damages based on personal injury caused by negligence, wrongful eviction, and breach of the lease.

Respondents answered and this matter proceeded to discovery. As relevant here, respondents sent King requests for admission but King failed to respond. Contained within the requests for admission were requests for King to admit that she suffered no harm by living at the property, that she declined an offer to stay in a hotel during repairs to the property, that she failed to perform maintenance to the property as required under the lease, and that asbestos was not in the residence. Respondents subsequently moved for case concluding discovery sanctions and, while the district court declined to impose the requested sanctions, it deemed their requests for admission to be admitted pursuant to NRCP 36(a)(3).

King thereafter filed a motion for summary judgment. Respondents opposed King's motion and filed their own motion for summary judgment. King opposed respondents' motion. The district court subsequently issued a written order granting respondents' motion for summary judgment and denying King's. The district court found the evidence established that respondents did not breach a duty owed to King as they took prompt action to stop the leak after King notified them of the water damage and contracted with companies to repair the resulting damage. In addition, the court found King's efforts to stymie the restoration of the property and her decision to remain on the property despite notice of possible dangers constituted an assumption of risk such that respondents were not liable based on negligence.

The district court also found that respondents did not evict King, that she resided there for approximately three months after the water damage occurred, and that King herself chose to vacate the property in March of 2022. For those reasons, respondents were not liable based on wrongful eviction.

Finally, the court found that King did not clearly explain how the lease had been breached and that the evidence presented by respondents established that they complied with all terms of the lease agreement.

The district court ultimately concluded that respondents met their burden to establish that there were no genuine disputes of material fact and that King failed to produce evidence in support of her claims. Following the grant of respondents' motion for summary judgment, King moved for reconsideration of that decision and respondents opposed the motion. The district court subsequently denied King's motion for reconsideration. This appeal followed.

Summary judgment

On appeal, King argues that the district court erred by granting respondents' 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). 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. The party moving for summary judgment must meet its initial burden of production to show there exists no genuine disputes of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact.” *Id.* at 603, 172 P.3d at 134.

First, King claimed that respondents were liable based on negligence. To establish a negligence claim, King needed to prove the following four elements: “(1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009). Moreover, “landlords as other persons must exercise reasonable care not to subject others to an unreasonable risk of harm.” *Riley v. OPP IX, L.P.*, 112 Nev. 826, 831, 919 P.2d 1071, 1074 (1996) (quoting *Turpel v. Sayles*, 101 Nev. 35, 39, 692 P.2d 1290, 1293 (1985)). “A landlord must act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.” *Id.*

Here, there is no genuine dispute that, after King notified it of the water leak, Go Global contracted with a plumber to stop the leak. Go Global thereafter contracted with a restoration company and that company set to work to repair the damage. However, King stymied the restoration company’s efforts and refused to let that company continue work on the residence. King also refused to permit a second restoration company to enter the residence. In addition, King refused Fang and Chow’s offers to

pay for her to stay in a hotel while the restoration companies repaired the residence. Based on the aforementioned facts, King failed to produce evidence that Go Global, Fang, and Chow breached their duty of care toward King thereby giving rise to a genuine dispute of material fact. *See Riley*, 112 Nev. at 831, 919 P.2d at 1074.

In addition, “[i]t is well settled that failure to respond to a request for admissions will result in those matters being deemed conclusively established,” *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1390 (1993), and King did not respond to respondents’ request for admissions. As stated previously, King’s failure to respond conclusively established that King was not harmed by living at the property. Thus, there is no genuine dispute to support that respondents caused the injuries King claimed to have suffered. *See Clark Cnty. Sch. Dist. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1279 (2017) (defining causation).

Finally, to the extent that King was exposed to any mold or asbestos following the water leak, she was aware on December 8, 2021, that she risked exposure to those contaminants if she remained in the residence without permitting the restoration companies to fix the damage. Nonetheless, King remained in the residence for approximately three more months after that date and refused to permit respondents to fix the damage to the residence. Thus, the district court did not err in finding that, to the extent King alleged she was exposed to mold or asbestos following the water leak, she assumed the risk of such exposure by refusing to permit respondents to correct the water damage and by remaining in the residence. *See Renaud v. 200 Convention Ctr. Ltd.*, 102 Nev. 500, 501, 728 P.2d 445, 446 (1986) (stating “[a]ssumption of the risk is based on a theory of

consent”); *see also Clark Cnty. Sch. Dist.*, 133 Nev. at 630, 403 P.3d at 1275 (“Implied assumption of risk requires (1) voluntary exposure to danger, and (2) actual knowledge of the risk assumed.” (internal quotation marks omitted)).

Based on the foregoing, we conclude that King failed to present any genuine dispute of material fact to support that respondents were liable based on negligence. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Therefore, King is not entitled to relief for this claim.

Second, King claimed respondents were liable for a wrongful eviction pursuant to NRS 118A.390. King contended that respondents evicted her in retaliation for her complaints about the disrepair of the residence. A tenant may recover damages pursuant to NRS 118A.390 “[i]f the landlord unlawfully removes the tenant from the premises or excludes the tenant by blocking or attempting to block the tenant’s entry upon the premises, willfully interrupts or causes or permits the interruption of any essential item or service.”

However, by way of the unanswered requests for admission, the facts supported that respondents did not evict King or otherwise block her entry onto the premises. Further, King, instead of vacating the residence for health reasons, moved to what King believed to be a nicer residence in Los Angeles, California. Further, the admissions and additional facts supported that the respondents did not willfully interrupt or cause the interruption of an essential item or service, as they contracted with a plumber and restoration companies to correct the leak and resulting water damage, and it was King who removed the dehydration units from the

residence and refused to permit the restoration companies to complete the repairs.

On appeal, King also argues that the district court erred in granting summary judgment on her eviction claim because there were genuine disputes of fact that respondents evicted her. However, King did not produce evidence to support that she was evicted. Instead, respondents met their initial burden of production by submitting affidavits and evidence demonstrating that they did not evict King and that they were not responsible for an interruption of an essential service, nor did they cause her alleged injuries and damages. King thereafter failed to introduce specific facts to show that a genuine dispute of material fact existed as to her eviction claim. *See Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134. Therefore, the district court did not err in finding that respondents did not wrongfully evict King, nor did they willfully interrupt or cause the interruption of an essential item or service. Thus, we conclude that the district court did not err in granting summary judgment on this claim.

Third, King claimed respondents breached the lease agreement. "To prevail on a claim for breach of contract, the plaintiff must establish (1) the existence of a valid contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) that the breach caused the plaintiff damages." *Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022).

King did not identify a clause in the lease agreement that respondents breached. Moreover, there was no genuine dispute of fact that respondents, in accordance with the lease agreement, contracted with a plumber to repair the leak and thereafter contracted with restoration

companies to fix damages to the residence caused by the leak. King refused to permit the restoration companies to enter the property to repair the damage, which violated King's obligations under the lease agreement. In light of the foregoing, we conclude that the district court did not err in finding no genuine dispute of material fact existed to support that respondents breached the lease agreement. Accordingly, we conclude that the district court did not err by granting summary judgment in favor of respondents on this claim.

Fourth, King contends that the district court abused its discretion by refusing to grant her additional time for discovery so as to oppose respondents' motion for summary judgment. We review the denial of a request for a continuance in the face of a motion for summary judgment for abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). NRCP 56(d) provides that a district court may allow additional time to conduct discovery if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 873, 265 P.3d 698, 700 (2011). In addition, such a request is only appropriate when the movant expresses how further discovery will create a genuine dispute of material fact. *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62.

Here, King made general requests for additional discovery, but did not specifically explain why she could not present sufficient facts to justify her opposition or how the additional information she hoped to obtain through discovery would create a genuine dispute of material fact. Under these circumstances, the district court was well within its discretion to

decline to grant a continuance for discovery. *See id.* at 117-18, 110 P.3d at 62.

Fifth, King argues that the district court erred by granting respondents' motion for summary judgment without permitting oral argument. However, EDCR 2.23(c) states that a district court "may consider the motion on its merits at anytime with or without oral argument, and grant or deny it." Accordingly, King fails to demonstrate that the district court erred by granting the motion for summary judgment without permitting oral argument.

Minute orders

Next, King argues that the district court erred by issuing minute orders concerning various decisions, as King contends the minute orders deprived her of the opportunity to challenge those decisions on appeal. However, the district court subsequently entered a final written judgment, *see Sandstrom v. Second Jud. Dist. Ct.*, 121 Nev. 657, 659, 119 P.3d 1250, 1252 (2005) (stating "a final order [is] one that disposes of all issues and leaves nothing for future consideration"), and King filed a notice of appeal following entry of that decision. King was therefore able to challenge the court's interlocutory decisions—even those made orally or by minute order—in the context of her appeal from the final judgment. *See Consol. Generator Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (stating interlocutory decisions made prior to the entry of a final judgment may be considered by this court in the context of an appeal from the final judgment). Accordingly, King does not demonstrate the district court erred by issuing minute orders in this matter

or that those orders harmed her ability to receive full appellate review of her claims.

Proposed orders

Next, King argues that the district court abused its discretion by adopting and signing proposed orders prepared by respondents' counsel. However, King's claim lacks merit in light of the rules of practice for the Eighth Judicial District Court requiring parties to include proposed orders with their motions. See EDCR 1.90(a)(4) (stating "the prevailing party shall submit a written order to the judge"); EDCR 7.21 (requiring the prevailing party to provide the court with a draft order or judgment). Therefore, King fails to demonstrate the district court abused its discretion in this matter. See *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 484 (Ct. App. 2023) (reviewing a district court's decision to adopt a party's proposed order for an abuse of discretion).


Judicial bias

Finally, King argues that the district court was biased against her. We conclude that relief is unwarranted on this point because King has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and the court's decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or

antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, King is not entitled to relief based on this claim.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹Insofar as King raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Anna Albertson, District Judge
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