

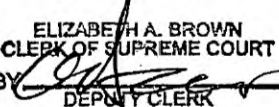
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PARNELL COLVIN,
Appellant,
vs.
TAKO, LLC,
Respondent.

No. 86719-COA

FILED

JUN 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Parnell Colvin appeals from a district court order granting summary judgment in a negligence action. Eighth Judicial District Court, Clark County; Jessica K. Peterson, Judge.

Colvin was a tenant of a property owned by respondent Tako, LLC, (Tako) located in Las Vegas, Nevada. On February 20, 2019, Colvin encountered flooding in the master bathroom of the property, due to a leaking toilet, and notified Tako's property manager. Colvin was mopping up water from the leaking toilet when he slipped and fell, allegedly sustaining injuries to his head, right knee, right shoulder, right elbow, and lower back.

In September 2020, Colvin filed a complaint against Tako for negligence and negligent hiring, training, retention, supervision and management, asserting that Tako failed to make necessary repairs in a timely manner. Tako filed an answer, and discovery commenced in April 2021. In October 2021, Tako served interrogatories and requests for production of documents on Colvin. Shortly after, Colvin's first attorney

moved to withdraw as Colvin's counsel, due to a rift in the attorney-client relationship. In opposition, Colvin detailed disagreements he had with his attorney, but requested that his attorney remain on the case as he anticipated difficulty with obtaining a new attorney. After a hearing, the district court granted the motion to withdraw in December 2021. Thereafter, Colvin obtained a new attorney to represent him.

In August 2022, Colvin's second attorney moved to withdraw as counsel, due to "irreconcilable disagreements" between counsel and Colvin. In response, Colvin argued that the motion to withdraw was inaccurate and contained misrepresentations. The district court granted the motion and further ordered Tako to personally serve Colvin with written discovery requests. On October 24 and 25, Tako electronically served, emailed, and personally served requests for admission, interrogatories, and requests for production of documents on Colvin. Colvin's responses to the requests for admission were due on or before November 23, 2022. On October 27, Colvin retained his third attorney to represent him. On October 31, Tako discussed with Colvin's third attorney that they had propounded written discovery on Colvin that were due by November 23, 2022. However, no responses to the requests for admission or other written discovery were made. In February 2023, Colvin's third attorney moved to withdraw as Colvin's counsel alleging that Colvin had made material misrepresentations to counsel during the representation. Colvin filed a response disputing his attorney's assertions. Upon review, the district court granted the third attorney's motion to withdraw.

Subsequently, in April 2023, Tako moved for summary judgment. Specifically, Tako asserted that it was entitled to judgment as a

matter of law as Colvin failed to produce any evidence that Tako negligently caused Colvin's injuries. Additionally, Tako argued that there were no genuine disputes of material fact as Colvin failed to timely respond to Tako's requests for admission. As a result, the admissions refute any liability towards Tako as Colvin admitted that Tako was not negligent for causing the plumbing issues. In opposition, Colvin argued that Tako was responsible for his injuries and requested that the district court deny the motion for summary judgment.

After a hearing, the district court issued an order granting Tako's motion for summary judgment. The court found that there was no dispute that Colvin was properly served with the requests for admission in October 2022. Additionally, the court found that there was no dispute that Colvin failed to timely respond to the requests for admission. Accordingly, because the requests for admission were deemed admitted, it was undisputed that (1) Tako did not cause the plumbing issue, as the alleged incident was a direct result of Colvin or another resident flushing a toy or diaper down the toilet; (2) Colvin saw the water from the toilet before he allegedly slipped and fell; (3) After the alleged incident, Colvin observed a plumber deconstruct the basin of the toilet and a child's toy was stuck therein; (4) Colvin was no longer treating with any medical provider for his alleged injuries; (5) Colvin had no permanent injuries as a result of the alleged incident; (6) Colvin did not miss any paid work as a result of the alleged incident; and (7) Colvin was not making a claim for lost wages and future economic damages in the litigation. Thus, the court found that it was undisputed that Tako was not negligent for causing the plumbing issue, rather it was Colvin or another resident who caused the flooding and caused

Colvin's injuries. The court also found that Colvin did not dispute that he failed to timely respond to the requests for admission, and still had not responded. The court further found that Colvin did not identify any discovery that would or could change the fact that Tako did not cause the incident as demonstrated in Colvin's admissions. Because Colvin could not meet his burden of proof in establishing that Tako caused his injuries, summary judgment was granted in light of the admissions. Colvin now appeals.

On appeal, Colvin argues that the district court abused its discretion in allowing his attorneys to withdraw. He also asserts that the district court abused its discretion in allowing his third attorney to withdraw knowing that the attorney had not responded to the request for admissions. He further argues that summary judgment was not appropriate as the district court accepted Tako's factual assertions rather than allowing for evidence to be presented at trial. In response, Tako asserts the district court properly awarded summary judgment given Colvin's failure to respond to the requests for admission, and that Colvin was unable to establish the required elements to succeed on his claims for negligence and negligent hiring, retention and supervision.¹

¹We reject Tako's argument that Colvin's notice of appeal was premature in light of NRAP 4(a)(6). Additionally, Colvin's challenges to the underlying orders allowing his attorneys to withdraw can be considered in the context of this appeal from the final judgment. See *Consolidated Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

This court reviews a grant of a motion to withdraw as counsel for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). An attorney may withdraw as counsel of record upon a showing of good and sufficient cause with reasonable notice to the client at the discretion of the court. RPC 1.16; EDCR 7.40(b). Here, the record supports that there was good cause to grant the motions to withdraw due to the breakdown in the attorney-client relationship with each of Colvin's attorneys. Specifically, Colvin filed responses to each motion detailing disagreements with his attorney's actions. Additionally, the record supports that Colvin had notice of the withdrawals. To the extent Colvin specifically argues that the district court abused its discretion in allowing his third attorney to withdraw because of the missed deadlines, the record supports that the requests for admission were properly served on Colvin before he retained his third attorney. When his third attorney was retained, Tako discussed with the third attorney that Colvin had been served with the requests for admission, and that responses were due on November 23, 2022. Furthermore, the time to respond to the requests had expired well before the third attorney moved to withdraw in February 2023. Thus, the district court did not abuse its discretion in allowing Colvin's attorneys to withdraw.

Next, we turn to whether the district court erred in granting summary judgment. We review a district court 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.*

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.

Under NRCP 36(a)(3), once a request for admission is served, “[the] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Courts consider any matter admitted under NRCP 36 to be “conclusively established unless the court, on motion, permits the admission to be withdrawn or amended.” NRCP 36(b). Moreover, “[i]t is well-settled that unanswered requests for admission may be properly relied upon as a basis for granting summary judgment.” *Est. of Adams v. Fallini*, 132 Nev. 814, 820, 386 P.3d 621, 625 (2016).

Here, Colvin failed to respond to the requests for admission within thirty days or any time prior to the filing of the summary judgment motion. Accordingly, the matters contained in the requests for admission are deemed admitted and considered conclusively established. *See* NRCP 36(b); *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389-90 (1993). Importantly, Colvin failed to withdraw or amend the admissions, which was an available remedy to him, even after Tako moved for summary judgment.

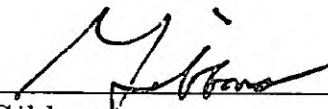
Consequently, by failing to serve timely responses to Tako’s requests for admission, the matters contained in those requests are conclusively established. As such, by his own admissions, there is no evidence that Tako caused the injury, and Colvin failed to meet the elements of breach and causation to support his claims for negligence and negligent hiring, training, retention, or supervision. *See Scialabba v.*

Brandise Constr. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996) (“To prevail on a negligence theory, a plaintiff must generally show that: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff’s injury; and (4) the plaintiff suffered damages.”); *Freeman Expositions, LLC v. Eighth Jud. Dist. Ct.*, 138 Nev., Adv. Op. 77, 520 P.3d 803, 811 (2022) (stating that “[t]o establish a claim for negligent hiring, training, retention, or supervision of employees, a party must show (1) a duty of care defendant owed the plaintiff; (2) breach of that duty by hiring, training, retaining, and/or supervising an employee even though defendant knew, or should have known, of the employee’s dangerous propensities; (3) the breach was the cause of plaintiff’s injuries; and (4) damages” (internal quotation marks omitted)). As a result, we perceive no error of law in the district court’s granting of summary judgment in Tako’s favor. *See Est. of Adams*, 132 Nev. at 820, 386 P.3d at 625.²


Based on the foregoing, we

²Although Colvin argues that the district court did not allow him to make arguments at the summary judgment hearing, this is belied by the record which states that the court heard arguments by Colvin. We also reject Colvin’s argument that the district court should have made findings on the record when granting summary judgment, as the court’s order sufficiently made findings as to the basis for summary judgment. *See Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482-84 (Ct. App. 2023) (explaining that district courts may adopt a party’s proposed order verbatim without making independent findings on the record, and that we will review the contents of the order for error on appeal).

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jessica K. Peterson, District Judge
Parnell Colvin
Bremer Whyte Brown & O'Meara, LLP/Las Vegas
Eighth District Court Clerk

³To the extent Colvin raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief. Additionally, although Colvin's informal brief challenges the district court's award of costs to Tako and requests an injunction related to the costs, he did not appeal from the separate, post-judgment order awarding costs, and thus, this is not properly before the court in this appeal, and we do not address it.