IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BEATTY,
Appellant,
vs.
G.J.'S GENERAL CONTRACTORS, INC., A WASHINGTON CORPORATION,
Respondent.

No. 38387

FILED

FEB 04 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent G.J.'s General Contractors' (GJ) motion for summary judgment. Appellant Jeffrey Beatty, a professional tree trimmer, was walking atop a pre-existing eight-foot residential wall adjacent to a GJ construction site to reach some tree branches. Beatty was injured when he fell from the eight-foot wall and impaled himself on a rebar dowel that GJ had installed on the adjacent property. Beatty filed a negligence claim against GJ, claiming that it was liable for his injuries. GJ filed a motion for summary judgment, arguing that it did not owe Beatty a legal duty. The district court granted GJ's motion for summary judgment, holding, among other things, that GJ did not owe Beatty a legal duty.

This court reviews summary judgment motions de novo.[1] Summary judgment is proper if the court determines, based on the evidence before it and viewed in the light most favorable to the non-

[1]Nicholas v. Public Employees' Ret. Board, 116 Nev. 40, 43, 992 P.2d 262, 264 (2000).

moving party,[2] that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[3] In negligence cases, a defendant is entitled to summary judgment if the defendant negates one element of the plaintiff's case.[4] One element of negligence requires that the alleged wrongdoer owed the injured party a duty of care.[5] A duty of care cannot be established unless the injured party proves that the harm caused was foreseeable.[6] This court has held that "in a negligence action, the question of whether a 'duty' to act exists is a question of law solely to be determined by the court."[7]

The rebar dowels were located at the rear of GJ's construction site, approximately several hundred feet from the nearest public road or walkway, and the residential wall was located on another landowner's property adjacent to the construction site. GJ did not owe Beatty a duty of care because it was not foreseeable that someone would climb on the residential wall that far from any public road or walkway and risk falling on the rebar dowels. Further, GJ had no duty to prevent Beatty from climbing on the wall located on another landowner's property.

---

[2]Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997).

[3]NRCP 56(c).

[4]Id.

[5]Mangeris v. Gordon, 94 Nev. 400, 402, 580 P.2d 481, 483 (1978).

[6]Ashwood v. Clark County, 113 Nev. 80, 85, 930 P.2d 740, 743 (1997).

[7]Lee v. GNLV Corp., 117 Nev. 291, 295, 22 P.3d 209, 212 (2001).

Beatty argues that GJ, at least, had a duty to warn him of the potential danger posed by the rebar dowels. Beatty failed to fully raise this issue at trial, and thus, did not preserve this argument for appeal.[8] Beatty alleges that he made this argument in his complaint. However, Beatty failed to include the original compliant in the record on appeal and "facts in the briefs of counsel will not supply a deficiency in the record."[9] Therefore, Beatty did not preserve this argument for appeal.

Regardless of whether Beatty preserved this argument for appeal, this court has held that a "duty to warn exists only where there is a special relationship between the parties, and the danger is foreseeable."[10] The danger in this case was not foreseeable. GJ would not have foreseen that someone would walk along an eight-foot wall and fall. Beatty failed to establish or argue on appeal that he had a special relationship with GJ that would have given rise to a duty to warn. Beatty was a contractor hired by the homeowners on the adjacent property to trim the trees and had no relationship with GJ. Because GJ and Beatty did not have a special relationship, GJ had no duty to warn Beatty.

Having determined that GJ neither owed Beatty a duty of care or a duty to warn, we need not address the issue of proximate cause. We

---

[8]See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981 983 (1981) (holding that "[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal").

[9]Lindauer v. Allen, 85 Nev. 430, 433, 456 P.2d 851, 853 (1969).

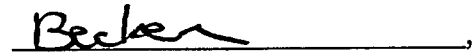
[10]See Sims v. General Telephone & Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991), overruled on other ground by Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 951 P.2d 1027 (1997).

conclude that summary judgment was appropriate because there were no genuine issues of material fact and GJ was entitled to judgment as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt



_____, J.
Becker

cc: Hon. Jackie Glass, District Judge
~~Hon. Jeffrey D. Sobel, District Judge~~
Hansen & Hall, LLC/Las Vegas
Georgeson Thompson & Angaran, Chtd.
Clark County Clerk