

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SARAH O'NEAL, AN INDIVIDUAL,
Appellant,
vs.
CARRAMAR ENTERPRISES, LLC
D/B/A YELLOW SCOOTERS LAS
VEGAS, A DOMESTIC LIMITED
LIABILITY COMPANY AND
CALIFORNIA HOTEL AND CASINO
D/B/A SAM'S TOWN
HOTEL/GAMBLING HALL, A
DOMESTIC CORPORATION,
Respondents.

No. 88547-COA

FILED

MAR 18 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Sarah O'Neal appeals from a district court order granting a motion for summary judgment in a personal injury action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

O'Neal filed a personal injury action against respondents California Hotel and Casino (CHC) and Yellow Scooters Las Vegas (Yellow Scooters) for injuries she sustained while using a mobility scooter at a hotel owned and operated by CHC. In her deposition, O'Neal testified she rented the scooter in advance of her stay and that after she checked in, she spoke with an employee about getting her scooter. Before the employee brought the scooter over to O'Neal from an area where it was secured, O'Neal signed a rental agreement that included a waiver and release. O'Neal testified that she did not read the agreement before signing it. When asked why, she

26 - 12674

explained that because she had already rented the scooter, the employee told her she could “just go ahead and sign it and then they would bring [the scooter] into the hotel.” The waiver provided that O’Neal “expressly assume[d] all liability arising out of operation of the equipment.” It also provided that O’Neal agreed “to indemnify and hold harmless Yellow Scooters and all properties where equipment is rented from any and all liability resulting from customer’s acts or omissions including, but not limited to, claims and/or lawsuits for personal injury, property damage, legal fees, costs, lawsuits, claims and judgements that may arise from customer’s use of equipment.”

After O’Neal signed the agreement, the employee brought the scooter over to her. O’Neal testified that she asked the employee to show her how to operate the scooter and the employee responded by asking O’Neal if she had ever operated a grocery store scooter. When O’Neal responded that she had, O’Neal testified that the employee said, “Well it’s the same thing,” before abruptly turning around and walking off.

O’Neal testified that she noticed the rental scooter was different from the grocery store scooters she had previously operated as soon as she sat in it and operated it. The scooter was faster and the braking controls were different as the grocery store scooters would stop themselves automatically when she took her hands off the controls. O’Neal testified that the speed of the scooter caused her to run into a railing in the elevator right after she began operating it. After navigating to her room to take a nap, O’Neal again used the scooter to go to dinner. Later, while she was in a bingo hall, O’Neal testified the scooter moved without “pressing the lever”

and that she was unable to stop it like she had before. The scooter crashed into a table, causing O'Neal to break her ankle, which required surgery and the insertion of screws. After her crash, a security guard came over and informed O'Neal that the scooter "went fast" because the speed control had been set to "hare" instead of "turtle." O'Neal explained the scooter she used at the grocery store did not have a speed control and that she did not know the scooter she rented from respondents had such a control. O'Neal testified that she thought the scooter she rented was safe and that she did not think there was a situation where she could be injured. During cross-examination, O'Neal testified that she knew prior to operating the scooter that if she ran a scooter into something, whether it be at a casino or a grocery store, that she could potentially hurt herself.

O'Neal filed a civil complaint against respondents alleging negligence for failing to instruct elderly people how to operate the scooter and failing to warn that the scooter can operate at a high rate of speed that is unsafe for elderly people. The complaint also alleged negligent hiring, training, and supervision. Following O'Neal's deposition, respondents moved for summary judgment. In their motion, respondents argued that O'Neal had released them from any liability through the waiver that she signed. Respondents further asserted that *Renaud v. 200 Convention Ctr. Ltd.*, 102 Nev. 500, 728 P.2d 445 (1986), was distinguishable from the facts of this case and that O'Neal was not entitled to relief as a matter of law. In *Renaud*, the Nevada Supreme Court held that a liability waiver may be unenforceable if the injured party did not expressly assume the risk of their injury and applied factors to determine whether the plaintiff had actual

knowledge of the risks associated with using a free-fall simulator. *Renaud*, 102 Nev. at 501-02, 728 P.2d at 446.

Following a hearing, the district court granted summary judgment in respondents' favor, determining that O'Neal assumed the risk of her injuries. In granting respondents' motion for summary judgment, the district court agreed with respondents and distinguished *Renaud*, holding that it did not apply to the facts of this case. The district court found that the free fall simulator at issue in *Renaud* was a "unique experience" whereas O'Neal had been operating grocery store scooters for ten years, scooters are readily available, and that O'Neal knew of the risks associated with scooters, including that she could be injured. This appeal followed.

On appeal, O'Neal argues the district court erred by not applying *Renaud* and by determining that the liability waiver precluded her from obtaining relief. O'Neal contends that the district court improperly granted respondents' motion for summary judgment because there exists a genuine dispute of material fact regarding whether she expressly assumed the risk associated with operating a variable acceleration scooter that she did not know how to operate. O'Neal argues that she was rushed into renting the scooter without being shown how to operate it, was told by the employee that it was operated like grocery store scooters, and she did not read the liability waiver. O'Neal contends that the scooter operated differently than the grocery store scooters she had used in the past and thus she did not assume the specific risks associated with the scooter she rented from respondents because she was unaware of them. Finally, O'Neal argues the district court erred by improperly relying solely on her deposition

testimony in which she stated that she knew she could be injured by a scooter, as the court ignored her other testimony where she explained that she did not expect to be hurt by the rental scooter. Because, as we explain further, a genuine dispute of material fact exists as to whether O'Neal expressly assumed the risk of her injuries, we reverse the district court's order granting summary judgment.

This court reviews a grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is only appropriate where, construing all evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact, and "the moving party is entitled to a judgment as a matter of law." *Id.* (internal quotation marks omitted); see NRCP 56(a).

A liability waiver may be unenforceable if the injured party did not expressly assume the risk of their injury. *Renaud*, 102 Nev. at 501-02, 728 P.2d at 446. Express assumption of risk "is founded on the theory of consent, with two main requirements: (1) voluntary exposure to danger, and (2) actual knowledge of the risk assumed. A risk can be said to have been voluntarily assumed by a person only if it was known to him and he fully appreciated the danger." *Sierra Pac. Power Co. v. Anderson*, 77 Nev. 68, 71-72, 358 P.2d 892, 894 (1961) (internal quotation marks omitted).

In this case, the parties do not dispute that O'Neal voluntarily rented the scooter. However, O'Neal argues that she did not have actual knowledge of the risks associated with operating a variable acceleration scooter. "[T]he essential element" of assumption of risk "is the *actual knowledge* of the danger assumed," *Renaud*, 102 Nev. at 501, 728 P.2d at

446 (emphasis in original), “which operates only when the party actually knows the full scope and magnitude of the danger and thereafter voluntarily exposes himself to it,” *Anderson*, 77 Nev. at 72, 358 P.2d at 894. When evaluating whether the injured party had actual knowledge of the risk, the Nevada Supreme Court has held:

[i]t is necessary to evaluate all the circumstances as they existed at the time the release was obtained. Considerations should include (but are not limited to) the following: the nature and extent of the injuries, the haste or lack thereof with which the release was obtained, and the understandings and expectations of the parties at the time of signing.

Renaud, 102 Nev. at 502, 728 P.2d at 446; *see also Austin v. Sun Buggy Fun Rentals, Inc.*, Nos. 87321-COA, 87719-COA, 2024 WL 4249080, *4 (Nev. Ct. App. Sep. 19, 2024) (Order Affirming in Part, Reversing in Part, Vacating in Part, and Remanding) (noting “the actual knowledge requirement in relation to express assumption of risk in a negligence matter”). Evaluation of these considerations is a factual determination. *See Renaud*, 102 Nev. at 501-02, 728 P.2d at 446 (“Because actual knowledge of the risks assumed is an essential element of this defense, such a matter must be reserved for the factfinder.”).

In this case, although the parties agreed that the doctrine of express assumption of the risk applied, O’Neal argued in her opposition to respondents’ motion for summary judgment that summary judgment was not appropriate based on *Renaud*. The district court determined that the *Renaud* case and its factors did not apply in its order granting summary

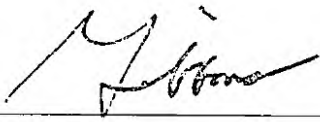
judgment. We conclude this was error. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 (“The substantive law controls which factual disputes are material and will preclude summary judgment”); *see also Austin*, Nos. 87321-COA, 87719-COA, 2024 WL 4249080, at *4 (concluding the district court erred by failing to evaluate the *Renaud* factors in its order granting summary judgment related to an all-terrain vehicle rental agreement liability waiver).

Evaluating the *Renaud* factors in conjunction with O’Neal’s deposition testimony, we conclude there was a genuine dispute of material fact as to whether O’Neal had actual knowledge—and thus assumed the risk—of her injuries for the type of accident in which she was involved. With regard to the first factor, while O’Neal testified that she knew she could potentially be injured by crashing a scooter, her testimony regarding the difference in speed and operating controls related to the scooter she rented from respondents and the scooters she had previously operated suggests that these differences could have contributed to her injuries and were thus not the type of injuries O’Neal would expect from operating the scooter. With regard to the second and third factors, O’Neal testified at her deposition that she did not understand or expect the scooter she rented from respondents to operate differently than the grocery store scooters she was used to, she did not expect to be injured by the scooter, she did not read the liability waiver before signing it, and the employee did not help her understand how to operate the scooter and was abrupt with her when she asked for assistance with operating the scooter.

Given this testimony, there was a genuine dispute of material fact as to whether O'Neal assumed the risk of her injuries under *Renaud*. Therefore, we conclude that summary judgment was improper. See *Renaud*, 102 Nev. at 502, 728 P.2d at 446 (“[B]ecause there was a dispute as to whether Ms. Renaud knowingly and voluntarily assumed the risks associated with the [activity], the matter was not appropriate for a determination as a matter of law” and “it is necessary for the fact finder to hear testimony and assess credibility.”). In light of the above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Susan Johnson, District Judge
Dana Jonathon Nitz, Settlement Judge
Michael T. Hua Law
Ivie McNeill Wyatt Purcell & Diggs
Ray Lego & Associates
Eighth District Court Clerk