IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT W. TILLMAN,
Appellant,
vs.
CLARK COUNTY SCHOOL DISTRICT,
Respondent.

No. 89830-COA

FILED
APR 16 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert W. Tillman appeals from a final judgment following a short trial. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Tillman filed a complaint against respondent Clark County School District (CCSD) arising out of injuries he sustained while in a physical education (P.E.) class when he was a fifth-grade student. Tillman asserted theories of negligence against CCSD, and the matter ultimately proceeded through court-annexed arbitration, following which the arbitrator found against Tillman on all of his claims.

After Tillman requested a trial de novo, the case entered the short trial program. Tillman filed a motion for summary judgment alleging he was entitled to judgment as a matter of law because CCSD was negligent per se. The short trial judge denied his motion and Tillman's subsequent motion for leave to file a motion for reconsideration. A little over a week before trial, Tillman filed a motion requesting the short trial judge recuse because Tillman did not believe he would receive an impartial trial. The

motion was denied, and the case proceeded to trial where the jury found in favor of CCSD. This appeal followed.

On appeal, we first address Tillman's challenge to the short trial judge's denial of his motion for summary judgment. An order denying summary judgment is not independently appealable; however, we may review the propriety of the district court's summary judgment ruling where an appellant has properly raised the issue in its appeal from the final judgment. *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001). Our review is de novo and without deference to the district court's findings. *Id.* 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. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). 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.

To survive a summary judgment motion in a negligence claim, "there must be factual disputes as to: (1) duty; (2) breach; (3) actual causation; (4) legal causation; and (5) damages." *Sims v. Gen. Tel. & Elec.*, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991). "[C]ourts are reluctant to grant summary judgment in negligence cases because foreseeability, duty, proximate cause and reasonableness usually are questions of fact for the jury." *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981) (internal quotation marks omitted).

Tillman argues he was entitled to summary judgment on his negligence per se claims because CCSD violated various statutes, caselaw, and CCSD policies. A negligence per se theory arises when the alleged duty of care is created by statute and satisfies the duty and breach elements of a negligence claim. *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 828, 221 P.3d 1276, 1283 (2009). However, to utilize a statute for negligence per se, the plaintiff must demonstrate (1) they are within the class of persons "whom the statute is intended to protect" and (2) "the injury is the type against which the statute is intended to protect." *Id.*

Here, Tillman relies on purported violations of CCSD regulations and guidelines that students were not permitted to run on the blacktop, but CCSD policies "lack[ ] the force and effect" of a legislative enactment and therefore do not support a negligence per se theory. *See, e.g., Price v. Sinnott*, 85 Nev. 600, 605, 460 P.2d 837, 839-40 (1969) (explaining that administrative regulations generally do not support a negligence per se theory because they "lack[ ] the force and effect of a substantive legislative enactment" and there must be "some leeway for those instances where the rule in issue may be arbitrary and its violation not necessarily unreasonable"); *see also Vega v. E. Courtyard Assocs.*, 117 Nev. 436, 441, 24 P.3d 219, 222 (2001) (discussing that a building code supports a negligence per se theory once it is adopted through the passage of a local ordinance). Moreover, liability under a negligence per se theory is

generally a question of fact for a jury. *Anderson v. Baltrusaitis*, 113 Nev. 963, 965-66, 944 P.2d 797, 799 (1997).[1]

This court has acknowledged there is generally a duty of care between a school and its students. *Clark County Sch. Dist. v. Smith*, No. 84259-COA, 2023 WL 6627952, at *2 (Nev. Ct. App. Oct. 11, 2023) (Order of Affirmance); *see also PHWLV, LLC v. House of CB USA, LLC*, 140 Nev., Adv. Op. 53, 554 P.3d 715, 719 (2024) ("The law is clear that if a legal duty exists, reasonable care under the circumstances must be exercised." (quoting *Lee v. GNLV Corp.*, 117 Nev. 291, 296, 22 P.3d 209, 212 (2001)); Restatement (Third) of Torts: Phys. & Emot. Harm § 40(a), (b)(5), cmt. l (Am. Law Inst. 2012) (explaining that schools have special relationships with their students which gives rise to a duty of reasonable case with regard to risks that arise within the scope of that relationship). However, here there was a dispute of material fact with regard to whether CCSD's breach of that duty caused Tillman's damages. *See PHWLV, LLC*, 140 Nev., Adv. Op. 53, 554 P.3d at 720 (explaining that whether a defendant's conduct was reasonable under the circumstances is generally an issue for the jury to resolve). Here, summary judgment was precluded because there were

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[1]Tillman does not argue on appeal which statute CCSD purportedly violated that would support his contention that the district court erroneously declined to grant summary judgment in his favor as to his negligence per se claims. As such, we need not consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to address a claim not supported by cogent argument); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed [forfeited].")

factual disputes regarding CCSD's supervision of the P.E. course, the participants' knowledge of the potential dangers, P.E. policies as to appropriate activities, and CCSD's response to the incident. Given these disputes, we cannot determine whether CCSD exercised reasonable care, and therefore, whether it breached its duty to Tillman under these circumstances, as this was a case-specific determination for the jury to resolve. *See id.* Thus, we conclude the district court properly denied Tillman's motion for summary judgment. *See id.*; *GES, Inc.*, 117 Nev. at 268, 21 P.3d at 13.

Next, Tillman raises various arguments related to the short trial and pretrial proceedings, including issues concerning the short trial judge's rulings concerning Tillman's motion in limine, the admission and exclusion of evidence, improper closing arguments, and Tillman's proposed jury instructions. However, as Tillman did not provide this court with a transcript of the pretrial or short trial proceedings, we are unable to fully evaluate all of the issues raised on appeal. Although there is no formal reporting of short trials unless paid for by the parties, NSTR 20, it is an appellant's burden to provide the "portions of the record necessary to determination of issues raised in appellant's appeal." NRAP 30(b)(3). And where the trial proceedings were not reported or recorded, "the appellant may prepare a statement of the evidence or proceedings from the best available means, including . . . the appellant's recollection," which "must be served on all other parties, who may serve objections or proposed amendments within 14 days after being served." NRAP 9(c).

Here, Tillman failed to utilize this option, resulting in a deficient record on appeal and the application of the necessary presumption that the missing portion of the record supports the lower court's decisions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Thus, presuming the missing portion of the record supports the short trial judge's decisions, we conclude that Tillman fails to demonstrate the short trial judge abused its discretion when issuing the aforementioned challenged rulings. *See M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008) (noting a district court's "decision to admit or exclude evidence [is reviewed] for abuse of discretion" and will not be disturbed "absent a showing of palpable abuse"); *Wyeth v. Rowatt*, 126 Nev. 446, 464, 244 P.3d 765, 778 (2010) ("The district court's decision to give or refuse a particular instruction will not be overturned absent an abuse of the district court's discretion or judicial error."); *Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 704, 220 P.3d 684, 693 (2009) (explaining that appellate courts review a district court's "rulings respecting the latitude allowed counsel in closing argument[s] for [an] abuse of discretion" (internal citation omitted)).

Finally, we conclude relief is unwarranted with regard to Tillman's allegations that the district court was biased against him because he has not demonstrated that the court's decisions in the underlying case were based on knowledge acquired outside of the proceedings and its decisions did 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. 401, 535 P.3d 1167 (2023). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Anna C. Albertson, Judge
Robert W. Tillman
Clark County School District/Office of The General Counsel
Eighth District Court Clerk