



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA MENDOZA, AN INDIVIDUAL,  
Appellant,  
vs.  
CIRCUS CIRCUS LV, LLC, A  
DOMESTIC LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 89712-COA

*ORDER OF AFFIRMANCE*

Maria Mendoza appeals from a district court order granting summary judgment in a negligence matter. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Mendoza sued Circus Circus LV, LLC, which operates the Circus Circus Hotel and Casino. Mendoza alleged that in July 2021, she was walking inside of the Circus Circus Hotel and Casino near the food court area as a patron when she slipped and fell in a pool of liquid on the floor and injured herself. Her complaint asserted a claim for negligence and that the doctrine of *res ipsa loquitur* was applicable. Thereafter, Mendoza did not propound any written discovery or take any depositions to investigate her claims. The case was part of the court-annexed arbitration program and scheduled for arbitration on October 14, 2024.

Prior to the arbitration, Circus Circus moved for summary judgment, arguing, among other things, that there was no evidence that it had actual or constructive notice of the allegedly dangerous condition in its food court, and that it could not be found liable under a mode of operation theory of liability. In addressing mode of operation, Circus Circus asserted that Mendoza could not establish that her injuries were

attributable to a reasonably foreseeable dangerous condition related to any form of self-service operations, or that Circus Circus failed to exercise reasonable care. Circus Circus attached various exhibits to the motion for summary judgment, which included Mendoza's responses to requests for admissions, wherein she admitted she lacked evidence showing that she knew how long the liquid was on the floor, notified Circus Circus of the condition on the date of the incident, or that Circus Circus was responsible for the liquid's presence on the floor or otherwise knew about it at the time. Circus Circus also provided a log report which indicated that Mendoza called Circus Circus security on July 7 to report that she fell on July 5.

Conversely, Mendoza asserted in her opposition that summary judgment was not warranted as there was constructive notice, and a mode of operation theory of liability applied in the matter. She also argued that Circus Circus failed to preserve video evidence of the fall, claiming that when she called Circus Circus to report the fall, she was advised that its video surveillance system had captured the fall. For support, Mendoza attached to her opposition, among other things, the same daily log report that Circus Circus attached to its motion.

Circus Circus filed a reply to Mendoza's opposition, which reiterated its prior arguments and argued that Mendoza's claim for spoliation of evidence was meritless. Circus Circus also attached as exhibits a schedule confirming that the Circus Circus security officer that Mendoza alleged she talked to was not working on the date she made her report and an affidavit from the Circus Circus director of security indicating there was no saved video surveillance of Mendoza's fall, and if there had been video of the event they would have saved it.

Subsequently, the district court granted summary judgment for Circus Circus and concluded that there was no evidence confirming that the alleged liquid was, in fact, on Circus Circus's floor. The court further found that Mendoza did not allege and otherwise had no evidence that Circus Circus caused the unidentified liquid to be on the floor, that Circus Circus knew the substance was on the floor, or that she informed any employee at the time. Thus, there was no evidence to provide for a jury to consider whether there was constructive notice. The court also found that there was no evidence that the alleged liquid was a foreseeable, continuous or recurring condition. Furthermore, the court found that Mendoza did not know how long the unidentified liquid was present on the floor before she encountered it. Next, the court concluded that a mode of operation theory of liability was inapplicable to this matter, given that separate businesses served their product to patrons in the food court, which was separate from Circus Circus, and there was no evidence that Circus Circus operated a self-service food court. And the court determined that while Mendoza asserted that when she called Circus Circus to report the fall a security guard informed her he had purportedly seen video of her alleged fall, Circus Circus had provided evidence that showed the security guard as not working on the date the call was made, and established that there was no saved video surveillance depicting the alleged fall, or an incident report concerning the same.<sup>1</sup> This appeal followed.

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<sup>1</sup>While the district court also found that *res ipsa loquitur* does not apply in this matter, Mendoza does not raise any argument on appeal as to this determination, and thus, we need not address it. See *Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2. 367 P.3d 442, 446 n.2 (Ct. App.

On appeal, Mendoza argues that constructive notice is a question of fact for a jury, which precluded summary judgment. Conversely, Circus Circus avers that the district court did not err in granting summary judgment as to the issue of constructive notice as Mendoza failed to present any evidence to establish constructive notice.

“This court reviews an order granting summary judgment de novo.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007); *see also* NAR 4(e) (explaining that when arbitration is pending, the district court may dispose of a case by hearing and ruling upon a motion for summary judgment). “[S]ummary judgment is appropriate ‘when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine [dispute] of material fact exists, and the moving party is entitled to judgment as a matter of law.’” *Id.* (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)); *accord* NRCP 56(a). “A genuine [dispute] of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.” *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007); *see also* *Cuzze*, 123 Nev. at 602, 172 P.3d at 134 (explaining that the party opposing summary judgment assumes the burden of production to demonstrate the existence of a genuine dispute of material fact after the party moving for summary judgment meets its initial burden of production).

“A claim for negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal

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2015) (stating that issues that are not raised on appeal are deemed forfeited).

causation, and (4) damages.” *Turner v. Mandalay Sports Ent., LLC*, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008). In the context of premises liability for negligence, “a business owes its patrons a duty to keep the premises in a reasonably safe condition for use.” *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993). When a patron slips and falls due to a foreign substance that was on the floor because of the actions of the business owner or one of its agents, “liability will lie, as a foreign substance on the floor is usually not consistent with the standard of ordinary care.” *Id.* But when the foreign substance came to be on the floor because of the actions of someone other than the business or its employees, traditionally the business would only be liable if it “had actual or constructive notice of the condition and failed to remedy it.” *Id.* at 250, 849 P.2d at 322-23; 40A Am. Jur. 2d *Hotels, Motels, Etc.*, § 75 (“Constructive notice may be shown by evidence that the defect was noticeable and existed for a sufficient length of time to charge its possessor with notice of its unsafe condition.”).

As noted above, Mendoza propounded no discovery requests and took no depositions to investigate whether Circus Circus had constructive notice. Thus, Mendoza acknowledged in her responses to Circus Circus’s requests for admission that she possessed no evidence that Circus Circus knew of the alleged liquid prior to her fall, no evidence that Circus Circus was responsible for the alleged liquid’s presence on the floor, no evidence that Circus Circus knew the alleged liquid was on the floor on the day of the incident, and she did not possess any evidence confirming how long the alleged liquid and/or hazard was on the floor. *See, e.g., Morton v. Wal-Mart Stores, Inc.*, No. 2:12-CV-00155-MMD-NJK, 2013 WL 557309, at \*4 (D. Nev. Feb. 12, 2013) (explaining that

constructive notice requires more than a mere showing of the presence of a hazardous condition). Given those admissions, Mendoza cannot establish that the alleged liquid was a hazardous condition that Circus Circus should have known about, and thus, she is unable to present a genuine dispute of material fact that would preclude summary judgment as to constructive notice. *See Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 631, 572 P.2d 921, 923 (1977) (explaining that where admissions left no room for conflicting inferences and were dispositive of the case, summary judgment was appropriate).

To the extent Mendoza asserts that constructive notice is a question of fact for a jury which would preclude summary judgment, once Circus Circus filed its motion for summary judgment, Mendoza was required to “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact.” *Cuzze*, 123 Nev. at 603, 172 P.3d at 134 (discussing the parties’ shifting burdens in the summary judgment context). However, in opposing summary judgment, Mendoza failed to produce evidence, such as an affidavit, to demonstrate a genuine dispute of material fact existed as to constructive notice. And as noted above, in light of her failure to conduct discovery to establish constructive notice and her admissions acknowledging that she possessed no evidence that Circus Circus knew of the alleged liquid prior to the fall or on the day of the incident, we discern no error in the district court’s grant of summary judgment as to the issue of constructive notice. *Id.* at 602, 172 P.3d at 134.

Therefore, we necessarily affirm the district court’s grant of summary judgment as to the issue of constructive notice. Insofar as

Mendoza is also arguing that Circus Circus had actual notice, as noted above, in light of her admissions acknowledging that she possessed no evidence that Circus Circus knew of the alleged liquid prior to the fall or on the day of the incident, we discern no error in the district court's grant of summary judgment as to the issue of actual notice. Moreover, as explained below in the context of Mendoza's mode of operation theory of liability, even if Mendoza had demonstrated that Circus Circus had actual or constructive notice, Mendoza also failed to present evidence to establish a genuine dispute of material fact that Circus Circus did not take reasonable precautions necessary to protect patrons from any alleged foreseeable dangerous conditions in the food court, which reinforces our decision to affirm the summary judgment on these portions of Mendoza's negligence claim.

Mendoza also argues that mode of operation liability applied because there was no dispute in the underlying matter that Circus Circus was the property owner and responsible for maintenance of the food court where the slip and fall occurred and it was foreseeable to Circus Circus that patrons would spill drinks on the floor. However, Circus Circus argues that the district court did not err in finding that a mode of operation theory of liability was inapplicable because separate businesses serve their product to patrons in the food court.

Under the mode of operation approach to premises liability, a plaintiff need not prove that a defendant had actual or constructive knowledge of a hazardous condition on its premises if the defendant business "owner's chosen mode of operation makes it reasonably foreseeable that a dangerous condition will occur." *FGA, Inc. v. Giglio*, 128 Nev. 271, 281, 278 P.3d 490, 496 (2012). In these situations, "a store

owner could be held liable for injuries to an invitee if the plaintiff proves that the store owner failed to take all reasonable precautions necessary to protect invitees from these foreseeable dangerous conditions.” *Id.* (quoting *Sheehan v. Roche Bros. Supermkts., Inc.*, 448 Mass. 780, 786, 863 N.E.2d 1276, 1283 (2007)).

In *Sprague*, a plaintiff slipped and fell on a squished grape in the self-service produce section of a grocery store. *Id.* at 248-51, 849 P.2d at 321-23. In reversing the district court’s grant of summary judgment to the defendant grocery store, the Nevada Supreme Court implicitly adopted the mode-of-operation approach. *Id.* at 251, 849 P.2d at 323. Specifically, the supreme court concluded that “[e]ven without a finding of constructive notice” of the grape on the floor, the jury could have found that the grocer “should have recognized the impossibility of keeping the produce section clean by sweeping,” as sufficient evidence was presented to allow the jury to find the grocer “was negligent in not taking further precautions, besides sweeping, to diminish the chronic hazard posed by the produce department floor.” *Id.* The supreme court reasoned that when a business maintains a self-service operation in which the danger of slippery substances falling to the floor is a repeated and inherent part of the operation, the mode of operation allows courts to infer legal notice from the nature of the business itself. *See FGA*, 128 Nev. at 281, 278 P.3d at 496. To determine whether business owners are liable to injured patrons under these approaches, the inquiry is “whether there was a ‘recurrent’ or ‘continuous’ risk on the premises associated with a chosen mode of operation.” *Id.* at 281 n.5, 278 P.3d at 497 n.5. Thus, a plaintiff can satisfy the notice requirement by demonstrating



that their injury was caused by a reasonably foreseeable hazard related to the business's self-service model. *Id.* at 281, 278 P.3d at 496.

On appeal, in addressing mode of operation liability, the parties raise arguments concerning whether Circus Circus was responsible for food court operations and whether spills in the food court were reasonably foreseeable. However, below, in addressing mode of operation liability, Circus Circus also argued in its motion for summary judgment that Mendoza could not establish that Circus Circus failed to exercise reasonable care, which Mendoza did not counter in her opposition to the motion for summary judgment. *See* NRCP 56(c)(1) (stating that “[a] party asserting that a fact . . . is genuinely disputed must support the assertion by,” as relevant here, citing materials in the record). And Circus Circus ultimately argues on appeal that Mendoza was without evidence to establish her negligence claim. Thus, we need not address the arguments raised as to responsibility for food court operations and foreseeability, because as Circus Circus argued below, Mendoza failed to establish a genuine dispute of material fact that Circus Circus did not take reasonable precautions necessary to protect patrons from any alleged foreseeable dangerous conditions in the food court. *See FGA*, 128 Nev. at 281, 278 P.3d at 496. Indeed, Mendoza did not propound written discovery or conduct any depositions in this case to establish that Circus Circus failed to take all reasonable precautions necessary to protect patrons from any alleged foreseeable dangerous conditions in the food court. *See, e.g., Howell v. Cty. of Snohomish*, 24 Fed. Appx. 785, 787 (9th Cir. Dec. 18, 2001) (affirming summary judgment where a puddle was on the floor of a prison kitchen an unknown length of time before the plaintiff slipped on it, but the kitchen

manager, one of the defendants, checked for spills every fifteen to thirty minutes); *Stein v. Costco Wholesale Corp.*, No. 2:21-CV-988 JCM (EJY), 2023 WL 5830537, at \*3 (D. Nev. Sep. 6, 2023), *aff'd*, No. 23-2773, 2024 WL 5205750 (9th Cir. Dec. 24, 2024) (granting summary judgment where, as relevant here, plaintiff did not dispute that Costco conducted hourly inspections and posted employees in every section of its warehouse to actively watch for and remedy hazardous conditions); *Mills v. Wal-Mart Stores, Inc.*, No. 2:16-CV-00097-KJD-CWH, 2017 WL 4038398, at \*4 (D. Nev. Sep. 13, 2017) (explaining that mode of operation theory of liability did not apply where the business periodically had employees check and sweep the area of plaintiff's fall, with an employee checking and sweeping the area 23 minutes before her fall, and that these actions were reasonable steps in response to the minor drips and spills foreseeable at a self-service flower display).

Because Mendoza failed to present evidence to establish a genuine dispute of material fact that Circus Circus did not take reasonable precautions necessary to protect patrons from any alleged foreseeable dangerous conditions in the food court, summary judgment was also warranted on this basis. *See Harrington v. Syufy Enters.*, 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997) (providing summary judgment is proper when the defendant negates at least one element of negligence as a matter of law); *Sprague*, 109 Nev. at 250, 849 P.2d at 322 (“An accident occurring on the premises does not of itself establish negligence.”). Thus, the district court did not err by finding that Mendoza's claims could not survive summary judgment under her negligence theory or a mode of operation approach. *See Cuzze*, 123 Nev. at 602, 172 P.3d at 134.

Furthermore, Mendoza argues that Circus Circus failed to preserve video evidence of the fall, which was a question of fact that should not have been resolved on summary judgment. Circus Circus argues that Mendoza did not proffer evidence, other than her own deposition testimony, that the purported video surveillance even existed. An act of destruction, or spoliation, involves the failure to preserve evidence that a party knows or reasonably should know is relevant to actual or anticipated litigation. *MDB Trucking, LLC v. Versa Prods. Co.*, 136 Nev. 626, 630, 475 P.3d 397, 402 (2020).

Here, the district court determined that employee shift schedules confirmed that the employee Mendoza alleged she spoke to about the incident was not working on July 7, 2021, the date of Mendoza's call to Circus Circus to report the incident listed in the daily log report. The court further found that Circus Circus confirmed that there was no saved video surveillance depicting Mendoza's alleged slip and fall, or an incident report concerning the same. Thus, the court concluded that the foregoing did not raise a genuine dispute of material fact as to whether Mendoza could establish liability in this case. While on appeal Mendoza points to the daily log report, which indicates that she reported the incident to Circus Circus, the daily log report does not state that surveillance video existed. Moreover, she does not challenge the affidavit that Circus Circus provided, which indicated that there was no saved surveillance video of the alleged fall. *See United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 1001 (9th Cir. 2002) (noting that while evidence of spoliation of the claim documents by the defendants would allow the plaintiff to argue to the jury adverse inferences of fraud that might be sufficient to defeat summary judgment, because there was

no credible evidence the defendant was involved in spoliation, there was nothing to warrant a finding of spoliation). Thus, Mendoza fails to demonstrate that the district court erred in granting summary judgment.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Monica Trujillo, District Judge  
Michelle L. Morgando, Settlement Judge  
Ryan Alexander, Chtd.  
Semenza Rickard Law  
Eighth District Court Clerk