

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVIN D. BARNER,

No. 38692

Appellant,

vs.

SCOTT JOHNSON,

Respondent.

FILED

JAN 09 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rishard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' motion for summary judgment on all of appellant's claims.

A summary judgment is reviewed de novo.¹ Under NRCP 56(c), summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.² "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party."³ Under NRCP 56, the moving party has the burden of showing that there is no genuine issue of material fact.⁴ Once the moving party satisfies his or her burden as required by Rule 56, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact.⁵ The non-moving party must show some factual dispute; he or she must show the existence of evidence sufficient that a fair-minded jury could reach a

¹Dermody v. City of Reno, 113 Nev. 207, 931 P.2d 1354 (1997); see also SIIS v. United Exposition Services Co., 109 Nev. 28, 846 P.2d 294 (1993) (summarizing authority for the conclusion that matters of law are reviewed de novo).

²See Butler v. Bogdanovich, 101 Nev. 449, 705 P.2d 662 (1985).

³Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

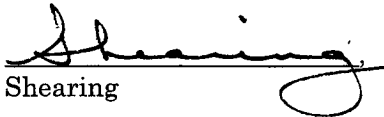
⁴See Maine v. Stewart, 109 Nev. 721, 726-27, 857 P.2d 755, 758 (1993).

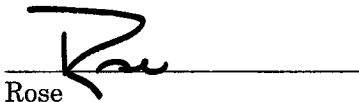
⁵Id. at 727, 857 P.2d at 759.

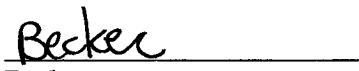
verdict in his or her favor.⁶ Thus, when the moving party has supported the motion as required by Rule 56, and the opposing party fails to set forth specific facts establishing that there is a genuine issue for trial, summary judgment is proper and the moving party is entitled to judgment as a matter of law. Moreover, here respondent has demonstrated that he is legally entitled to judgment.⁷

Having reviewed the record, we conclude that the district court did not err in granting respondent's motion for summary judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

 J.
Shearing

 J.
Rose

 J.
Becker

⁶See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 592 (1992).

⁷See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) (stating that the defense of qualified immunity protects "government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known"); Romero v. Kitsap County, 931 F.2d 624, 627 (9th Cir. 1991) (explaining that to determine whether an officer is shielded from liability on the basis of qualified immunity, the court must (1) identify the right allegedly violated; (2) determine whether the right was clearly established at the time of the violation; and (3) determine whether a reasonable officer would have believed that the conduct at issue violated the identified right); Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) ("An inmate's complaint of inadequate medical care amounts to a constitutional violation if the inmate alleges 'acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.'") (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)); see also Shapley v. Nevada Bd. of State Prison Com'rs, 766 F.2d 404, 407 (9th Cir. 1985) (providing that an inmate has no claim for deliberate indifference unless the denial is harmful).

⁸Although appellant was not granted leave under NRAP 46(b) to file papers in proper person, we have considered the documents received from him.

cc: Hon. William A. Maddox, District Judge
Attorney General
Alvin D. Barner
Carson City Clerk