

IN THE SUPREME COURT OF THE STATE OF NEVADA

GRANITE CONSTRUCTION
COMPANY, A CALIFORNIA
CORPORATION,
Appellant/Cross-Respondent,

vs.

DARRELL HENDERSON,
Respondent/Cross-Appellant.

No. 39334

GRANITE CONSTRUCTION
COMPANY, A CALIFORNIA
CORPORATION,
Appellant/Cross-Respondent,

vs.

DARRELL HENDERSON,
Respondent/Cross-Appellant.

No. 39581

FILED

AUG 16 2005

JANET M. LACE
CLERK U.S. SUPREME COURT
BY *J. Richards*
CLERK

ORDER OF REVERSAL

This is an appeal from a judgment pursuant to a jury verdict and an appeal and cross-appeal from an order awarding attorney fees in a personal injury action. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

During a construction project, appellant/cross-respondent Granite Construction Company started a brush fire while one of its employees attempted to cut a pipe with a saw. While en route to fight the fire, a fire truck belonging to the City of Winnemucca collided with respondent/cross-appellant motorcyclist Darrell Henderson. As a result,

Henderson and his wife, Elizabeth Henderson, sued both the City and Granite for negligence.¹

At trial, the parties disputed whether the fire truck had its sirens activated when it entered the intersection where the accident occurred. It was undisputed that the truck did have its emergency overhead lights activated and that it slowed and sounded a loud horn before entering the intersection. Henderson told the Nevada Highway Patrol that he heard the sirens but testified at trial that he did not hear any sirens, just the loud horn right before the collision.

Granite's primary contention on appeal is that it owed no duty of due care to Henderson as a matter of law and that the district court erred in refusing to grant summary judgment or enter a directed verdict in Granite's favor. We agree.

An essential element of a negligence action is the establishment that the defendant had a duty to exercise due care towards the plaintiff.² Whether a duty of due care exists is a question of law.³ In general, a duty of care will be found when a reasonable person under like circumstances knew or should have known that the harm suffered was

¹Elizabeth Henderson's claims were voluntarily dismissed below.

²Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590-91 (1991).

³Scialabba v. Brandise Constr. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

likely to result if due care was not used.⁴ In addition, even if an injury is foreseeable, public policy considerations must also be considered to avoid subjecting parties to endless consequences of a negligent act.⁵ As one court has noted, duty of care issues are a balancing between providing a remedy for injured persons and extending unlimited exposure to tort liability.⁶

The question before us then centers on whether it is reasonably foreseeable that a construction worker who negligently operates a saw would start a fire which would require the dispatching of an emergency vehicle and that the emergency vehicle would then be involved in an accident with a third party motorist. Even if we were to determine that this result was a foreseeable risk of harm from the improper operation of the saw, public policy demands that liability not be extended in this case. To do so would be to conclude that Granite owed a duty to every operator of a motor vehicle whenever Granite's negligence resulted in the need for an emergency vehicle response. This is exactly the type of unlimited exposure public policy prohibits. Accordingly, we

⁴Dakis v. Scheffer, 111 Nev. 817, 820, 898 P.2d 116, 118 (1995); RK Constructors, Inc. v. Fusco Corp., 650 A.2d 153, 156 (Conn. 1994).

⁵RK Constructors, 650 A.2d at 156 (citing W. Prosser & W. Keeton, Torts § 53, p. 358 (5th Ed. 1984)); Hamilton v. Beretta U.S.A. Corp., 750 N.E.2d 1055, 1060 (N.Y. 2001).

⁶DeAngelis v. Lutheran Medical Center, 449 N.E.2d 406, 407-08 (N.Y. 1983).

ORDER the judgment of the district court REVERSED.⁷

Becker, C.J.
Becker

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

cc: Hon. Richard Wagner, District Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Robertson & Benevento/Reno
Humboldt County Clerk

⁷We have considered Henderson's arguments that a duty of care exists under an extension of the Rescue Doctrine or cases in which a person's injuries are aggravated by subsequent negligence of third parties (i.e., a party receives additional injuries while riding in an ambulance as a result of initial harm caused by defendant) and conclude that they are without merit. In addition, given our conclusion that Granite owed no duty of care, Henderson's cross-appeal is moot.