

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS WOODS,
Appellant,
vs.
HOLLY EBERNICKEL,
Respondent.

No. 41291

FILED

OCT 10 2003

[Signature]
CLERK OF THE SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting summary judgment. On May 6, 2000, appellant Curtis Woods was a passenger in respondent Holly Ebernickel's 1972 Chevrolet pick-up when Ebernickel crashed the vehicle into a telephone pole east of Carson City. In late July of 2000, Woods had surgery for a detached retina in his left-eye. Apparently, the detached retina has left Woods with little or no sight in his left eye.

Woods eventually filed a complaint against Ebernickel and Ebernickel's insurance company, claiming negligence and requesting compensatory and punitive damages. The district court dismissed the claim against the insurance company as well as the punitive damages claim. As trial drew near, Ebernickel moved for summary judgment, arguing that Woods could not prove causation because Woods had produced no testimony or evidence that linked his injury to the accident. The district court granted summary judgment.

In order for a plaintiff to survive a summary judgment motion in a negligence claim, there must be factual disputes as to: duty, breach,

actual causation, legal causation, and damages.¹ This court is normally hesitant to affirm a summary judgment in negligence cases because jury issues are usually present, but if an element is clearly lacking as a matter of law, then summary judgment is proper.² Further, when a motion for summary judgment is made and supported, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.³

Here, Woods did not carry his burden in opposition to summary judgment. Woods failed to provide sufficient evidence that would allow the trier of fact to reasonably conclude that Woods' injury was caused by the accident. Instead, he relies on the timeline of the accident and subsequent retinal detachment to infer that the accident caused his injury. In some cases, where the accident and the injury are so close in time that it appears the injury necessarily followed from the accident, the timeline may support an inference of causation and defeat summary judgment.⁴ Here, however, the retinal detachment occurred over two months after the accident. Given the lapse of time between the accident and the manifestation of the injury, Woods was required to put forth

¹See Sims v. General Telephone & Electric, 107 Nev. 516, 815 P.2d 151 (1991) overruled on other grounds by Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 951 P.2d 1027 (1997).

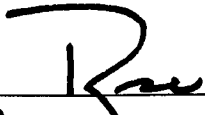
²Id.


³See Pegasus v. Reno Newspapers, Inc., 118 Nev. __, __, 57 P.3d 82, 87 (2002).

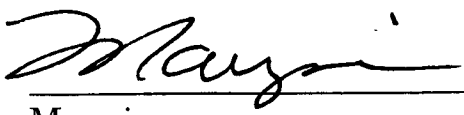
⁴Cf. Khan v. Southern Pacific Co., 282 P.2d 78 (Cal. Dist. Ct. App. 1955).

expert evidence that linked the car accident to his retinal detachment. His treating physician was unable to provide this evidence. Without any such evidence, Woods will be unable to establish the required element of causation.⁵ Accordingly, we affirm the judgment of the district court.

It is so ORDERED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Jerome Polaha, District Judge
Curtis Woods
Kenneth R. Bick
Washoe District Court Clerk

⁵See United Exposition Service Co. v. SIIS, 109 Nev. 421, 851 P.2d 423 (1993) (holding that a worker's compensation award cannot be based solely upon possibilities and speculative testimony).