

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRETT GALL,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 42400

FILED

OCT 07 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a negligence action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. Appellant Brett Gall was seriously injured when a motorist who was fleeing from police caused an accident in Las Vegas. Gall sued the Las Vegas Metropolitan Police Department (LVMPD), alleging police officer negligence. The district court granted summary judgment to the LVMPD, holding that it was immune from suit under NRS 41.032(2) and that the officers did not violate the public duty doctrine, codified at NRS 41.0336. On appeal, Gall argues that the LVMPD is not immune under NRS 41.032(2). Gall further argues that the officers affirmatively caused his injuries, making the LVMPD liable under NRS 41.0336.

We review summary judgment orders de novo.¹ “Summary judgment should be granted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of

¹Pressler v. City of Reno, 118 Nev. 506, 509, 50 P.3d 1096, 1098 (2002).

law.”² On appeal, we “construe the pleadings and evidence in the light most favorable to the nonmoving party.”³

Because we believe the case can be resolved under NRS 41.0336 and the public duty doctrine, we do not reach the issue of discretionary act immunity under NRS 41.032.

NRS 41.0336 provides that

[a] fire department or law enforcement agency is not liable for the negligent acts or omissions of its firemen or officers or any other persons called to assist it, nor are the individual officers, employees or volunteers thereof, unless:

1. The fireman, officer or other person made a specific promise or representation to a natural person who relied upon the promise or representation to his detriment; or

2. The conduct of the fireman, officer or other person affirmatively caused the harm.

The provisions of this section are not intended to abrogate the principle of common law that the duty of governmental entities to provide services is a duty owed to the public, not to individual persons.

In Coty v. Washoe County, we held that the term “affirmatively caused the harm,” as used in NRS 41.0336(2), means that a public officer must actively create a situation which leads directly to the damaging result.”⁴ In the case at bar, the officers did not affirmatively cause the harm to Gall. The officers made a decision to initiate and to

²Id.; NRCP 56(c).

³Pressler, 118 Nev. at 510, 50 P.3d at 1098.

⁴108 Nev. 757, 766, 839 P.2d 97, 99 (1992).

discontinue the police chase. In doing so, the officers owed a duty to the general public and not to Gall.

For the reasons set forth above, we affirm the judgment of the district court.

It is so ORDERED.

Becker, C.J.
Becker

Rose, J.
Rose

Maupin, J.
Maupin

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Law Offices of Barry Levinson
Rawlings Olson Cannon Gormley & Desruisseaux
Clark County Clerk