IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM J. ASHBAUGH,
Appellant,
vs.
ELISEO GUTIERREZ AND MARIA GUTIERREZ,
Respondents.

No. 42833

FILED

DEC 20 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 order, certified as final under NRCP 54(b), granting partial summary judgment. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant William Ashbaugh was injured in an automobile accident with Marcos Jimenes-Ramirez in Las Vegas, Nevada. The traffic accident report listed respondents Eliseo and Maria Gutierrez as owners of the vehicle driven by Jimenes-Ramirez, though the Gutierrezes were not involved in the accident. Pursuant to the report, Jimenes-Ramirez did not possess a driver's license and was cited for DUI. Eliseo testified that the Gutierrezes resided in Dolan Springs, Arizona, but their mailing address was a post office box in Kingman, Arizona. The traffic accident report listed the Kingman post office box as the address for both the Gutierrezes and Jimenes-Ramirez, but the Gutierrezes have denied knowing Jimenes-Ramirez.

Eliseo stated via deposition that he left the vehicle in the side yard of the house he was working on over the weekend. The car was locked and the windows rolled up. Apparently, however, one window could be manually pushed down and a second set of keys to the vehicle was in the glove box. Eliseo stated that he did not realize that keys were in the

glove box. When he returned to Las Vegas the next Monday, Eliseo testified that the car was gone. That morning, he reported the car stolen.

Ashbaugh brought a personal injury action against Jimenes-Ramirez and the Gutierrezes. After a default judgment was entered against Jimenes-Ramirez, the Gutierrezes obtained summary judgment from the district court. Ashbaugh now appeals, arguing that genuine issues of material fact exist as to whether the vehicle was stolen or driven with permission, and the district court erred in concluding that NRS 484.445 was not applicable.

We review a district court's grant of summary judgment de novo and without deference to the findings of the lower court.[1] Pursuant to NRCP 56, summary judgment is appropriate and "shall be rendered forthwith" if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, demonstrate that no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law.[2] When reviewing a motion for summary judgment, the evidence and any reasonable inferences drawn from it must be viewed in a light most favorable to the nonmoving party,[3] but the non-moving party must "do more than simply show that there is some

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[1]GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citing Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997) (citing same).

[2]NRCP 56(c); Tucker, 113 Nev. at 1353, 951 P.2d at 1029.

[3]Lipps v. Southern Nevada Paving, 116 Nev. 497, 499, 998 P.2d 1183, 1184 (2000) (citing Butler v. Bogdanovich, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985)).

metaphysical doubt" as to the operative facts.[4] The evidence presents a genuine factual dispute when a rational juror could return a verdict for the non-moving party.[5]

First, Ashbaugh contends that the district court erred in granting summary judgment because there is a genuine issue of material fact as to whether Jimenes-Ramirez stole or borrowed the Gutierrezes' car. The only link between Jimenes-Ramirez and the Gutierrezes is the traffic accident report, and the appearance of the shared post office box in the traffic accident report is inadmissible hearsay. The report does not indicate whether Jimenes-Ramirez provided this information to the investigating officer, or the investigating officer simply listed the address based on registration insurance or other documents in the vehicle. We conclude that Ashbaugh has failed to demonstrate the existence of a genuine issue of material fact as to whether Jimenes-Ramirez borrowed or stole the Gutierrezes' car. Accordingly, we conclude that the Gutierrezes were entitled to judgment as a matter of law, and the district court did not err in granting it to them.

Second, Ashbaugh argues that the Gutierrezes were negligent per se for violating NRS 484.445. NRS 484.445 states, "The person driving or in charge of any motor vehicle, except a commercial vehicle loading or unloading goods[,] shall not permit it to stand unattended without first stopping the engine, locking the ignition and removing the

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[4]Wood v. Safeway, Inc., 121 Nev. ___, ___, 121 P.3d 1026, 1031 (2005) (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)).

[5]Id.

key." Chapter 484, as a whole, only applies to vehicles on "highways,"[6] which is defined as "the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic, whether or not the public authority is maintaining the way."[7]

We conclude that NRS 484.445 is inapplicable because, based on Eliseo's testimony, the area in which he had parked the Gutierrezes' car was not a "highway." NRS 484.445 is also inapplicable because it targets dangers presented by cars left unattended with the engine running. Here, there is no suggestion in the record of such a circumstance. Therefore, NRS 484.445 was inapplicable to this case and the Gutierrezes could not be negligent per se for violating it. Accordingly, we conclude that the district court did not err in denying Ashbaugh's countermotion for summary judgment

Finally, presuming that the Gutierrezes' car was stolen, Ashbaugh argues that a genuine issue of material fact exists as to whether the Gutierrezes negligently left an extra set of keys in the glove compartment of a car parked in an abandoned area slated for highway construction. "The owner of a motor vehicle is under no duty to a person injured by a thief's operation of a stolen vehicle, absent 'special

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[6]Elliott v. Mallory Electric Corp., 93 Nev. 580, 583, 571 P.2d 397, 399 (1977).

[7]NRS 484.065.

circumstances' affecting the foreseeability of the theft and the thief's negligent operation of the vehicle."[8]

In Meihost v. Meihost, the Supreme Court of Wisconsin held that the owner of a car was not negligent or liable for the personal injuries sustained by the plaintiff in a collision caused by the negligent driving of a thief of owner's car.[9] The court determined that the owner could not reasonably foresee as probable the harm to the plaintiff arising from parking his car in a residential area and removing the key from the ignition, even though there was another key in a band-aid box in the glove compartment.[10] The court noted that there were no allegations in the complaints that the neighborhood was such that the owner should have been alerted to the danger of theft.[11]

Here, pursuant to Eliseo's testimony and affidavit, the vehicle's doors were locked, the windows were rolled up, and nothing suggested that they could be pushed down. Eliseo further testified that he had removed his key from the ignition and there were no other keys in plain sight. Pursuant to Maria's affidavit, her set of keys was in the glove compartment. No evidence indicated that there was anything inside the vehicle that was visible or enticing to passersby. Furthermore, there was

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[8]8 Am. Jur. 2d Automobiles and Highway Traffic § 698 (2005); see also Elliott, 93 Nev. at 585, 571 P.2d at 400 ("[T]he owner . . . of an automobile who leaves the keys in the ignition of his car is ordinarily not, as a matter of law, liable for injuries caused by the negligent operation of the vehicle by a stranger who steals the car.").

[9]139 N.W.2d 116, 121 (Wis. 1966).

[10]Id.

[11]Id.

no indication that the neighborhood had a high incidence of crime, a large transient population, or roaming juveniles. There was no evidence of the existence of bars or lounges or other places frequented by individuals who could become intoxicated and meddle with the vehicle. Based on these facts, Ashbaugh failed to raise a genuine issue of material fact as to whether the Gutierrezes were negligent in parking the car. We thus conclude that, as a matter of law, the Gutierrezes were entitled to summary judgment, and the district court did not err in granting it to them. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, C. J.
Becker

, J.
Rose

Parraguirre, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Albert D. Massi, Ltd.
Ashby & Ranalli
Clark County Clerk