

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE O'CONNER BEARD, FOR
JOSEPH O'CONNER BEARD,
DECEASED, A MINOR,
Appellant,
vs.
MARYANN J. JOHNSON,
Respondent.

No. 44596

FILED

APR 21 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a wrongful death action. Fifth Judicial District Court, Nye County; James W. Hardesty, Judge.

This action arises out of a mobile home fire, in which appellant George O'Connor Beard's three-year-old son died. Beard brought the underlying wrongful death action against Maryann Johnson, the seller of the mobile home, and the mobile home park owners,¹ claiming that the mobile home's wiring was defective. Relevant to this appeal, the complaint alleged causes of action in negligence and fraudulent

¹The district court dismissed on statute of limitations grounds Beard's complaint against the mobile home park owners, certifying its order as final under NRCP 54(b). On appeal, this court affirmed the district court's order. See Docket No. 38865. Accordingly, this appeal concerns only the seller, Johnson.

concealment of known defects.² Beard generally alleged that Johnson was negligent in failing to warn him about defective electrical wiring contained in the mobile home and in failing to correct the dangerous conditions and protect the safety of the mobile home's occupants.

Johnson filed a summary judgment motion, which the district court granted in part with respect to Beard's statutory negligence claims under NRS Chapters 113, 118, and 120, and NRS 489.701. With respect to Beard's other claims, the district court directed both parties to further brief the issue whether Beard could maintain his action under common law negligence or fraudulent concealment, as asserted in his complaint.

Johnson submitted a supplemental motion for summary judgment, and attached to the motion the Fire Marshal's report, which indicated that the heating and electrical systems were systematically checked to determine whether they were the cause of the fire. The report indicated that the electrical service in the home appeared to be in sound condition and that there were no signs of any wiring going to sharp points. Accordingly, the report concluded that there were no signs of the electrical system having overheated or overloaded. The report noted that an electrical space heater showed direct flame impingement, and that it

²Beard had also alleged violations of NRS Chapters 113, 118, and 120, and NRS 489.701. The district court, in an earlier order, granted summary judgment to Johnson on these statutory claims, and Beard does not purport to appeal from that order in his Proper Person Appeal Statement.

was the source of ignition as depicted in photographs from the scene. It was noted there was improper home heating in the form of space heaters operating throughout the home and that excessive use of space heaters can lead to product failure, such as breaking down the heater's safety over-temperature shut-down device. The report further concluded that there were excessive combustible materials throughout the structure, including controlled substances, which contributed to heavy smoke and toxic gases. In her motion, Johnson also argued that Beard's fraudulent concealment claim failed as a matter of law, given that there was no evidence to support that Johnson intended to conceal any defects from Beard when she sold him the mobile home.

In opposition, Beard asserted that issues of fact remained disputed with regard to the source of the fire and that "the Fire Marshal's report was proven to be one of the most inaccurate reports written in a very long time." Specifically, he argued that the Fire Marshal had failed to check the electrical system, including the wiring under the home and through the flooring, to determine whether it was "in sound condition," as stated in the report, or whether there was another source of ignition other than the space heater. Thus, he contended, the report's conclusion that the space heater was the source of the fire was speculative. To his opposition to Johnson's first summary judgment motion, Beard attached a portion of the trial transcript from his separate criminal proceeding, wherein someone named Carl Schueler testified that, before Beard occupied the mobile home, and while others were living in it, a television

exploded in the mobile home because the “trailer had lost its neutral and raised the line voltage.” According to Schueler’s testimony, the mobile home’s electrical service should have been fixed before anyone else was allowed to live in it.

After considering the parties’ arguments, the court granted to Johnson summary judgment on the remaining claims, finding that there existed no issues of disputed fact regarding the proximate cause issue. Specifically, the court noted that, other than to speculate that faulty wiring caused the fire, Beard offered no evidence to refute the Fire Marshal’s report, which concluded that the space heater caused the fire. With regard to Beard’s fraudulent concealment claim, the court found that Beard had failed to submit any evidence to establish Johnson’s intent to defraud or that the alleged concealment caused the claimed damages.


Orders granting summary judgment are subject to de novo review on appeal.³ Although negligence generally involves issues of fact for a jury to resolve, summary judgment is appropriate where the moving party negates at least one element (i.e. duty, breach, causation, or damages) of the plaintiff’s case.⁴

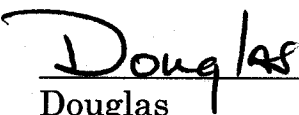
³See Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

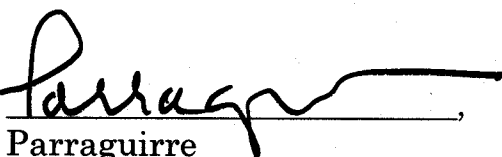
⁴Perez v. Las Vegas Medical Center, 107 Nev. 1, 4, 805 P.2d 589, 590-91 (1991); Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 633 P.2d 1220 (1981).

Upon de novo review of the record and consideration of Beard's appeal statement, we perceive no error in the district court's summary judgment. After investigating the scene, the Fire Marshal documented and photographed the source of the fire—the space heater. Beard asserts that the mobile home contained faulty wiring, but this assertion does not disprove the fact that the space heater caused the fire, as supported by the Fire Marshal's investigative report. Beard failed to establish any nexus between the allegedly faulty wiring and the fire. To the contrary, after a systematic check of the electrical system, the Fire Marshal deemed it sound. Thus, Johnson negated the causation element of Beard's negligence claim and was entitled to judgment as a matter of law. Likewise, Beard has offered nothing to support his contention that Johnson intended to conceal any alleged defects in the home's wiring. And, regardless, as stated, Beard's fraudulent concealment claim would nevertheless fail because Johnson successfully negated the causation element of Beard's claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
George O'Conner Beard
Ashby & Ranalli
Nye County Clerk