

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS GUADARRAMA, DECEASED, BY
AND THROUGH HIS PERSONAL
REPRESENTATIVE, JOSE JUAN-
GUADARRAMA; FELIPE ARROYO-
CUEVAS; MIGUEL GARCIA-GOMEZ;
CARMEN GUADARRAMA; MARICELA
ORIVALLES CUEVAS; AND CARMEN
CARRERA,
Appellants,

vs.

THE CITY OF SPARKS; AND THE STATE
OF NEVADA, DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Respondents.

No. 52631

FILED

JAN 26 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a torts action. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Below, appellants sued respondents, the City of Sparks and the Nevada Department of Health and Human Services, alleging that those entities knowingly allowed day-laborers such as themselves to gather on the grounds of the Northern Nevada Mental Health facility and, consequently, were obligated to use reasonable care to prevent those laborers from being struck by a speeding, out-of-control vehicle. The district court dismissed appellants' complaint, concluding that appellants had failed to state a claim because no such duty existed and NRS 41.033 (official immunity from liability based on failure to inspect or discover a hazard) and NRS 41.032(2) (discretionary-function immunity) immunities from liability barred the action. Appellants appealed.

On appeal, appellants' opening brief suffers from numerous significant defects.¹ Appellants fail to cite to an appendix, as required by NRAP 28(a)(3) and (e). Correspondingly, appellants' counsel failed to comply with NRAP 28(a)(6) by including an NRAP 28A certificate representing, among other things, that the brief is not frivolous and that it complies with "the requirement of Rule 28(e) that every assertion in the briefs regarding matters in the record be supported by a reference to the page of the appendix where the matter relied on is to be found." Indeed, appellants failed to file any appendix at all. NRAP 30.

The deficiencies noted above are sanctionable. See NRAP 28A(b); NRAP 31(c); Smith v. Emery, 109 Nev. 737, 743, 856 P.2d 1386, 1390 (1993). See also NRAP 38 (governing sanctions regarding a frivolous appeal). In addition, appellants failed to comply with NRAP 9(a)'s transcript request provisions. NRAP 9(a)(3). We admonish appellants' counsel for his disregard of this court's rules and caution him that any future derelictions will result in sanctions or referral to the State Bar.

Further, the opening brief does not address the NRS 41.033 immunity ground for dismissal. Accordingly, regardless of appellants' arguments on appeal, they failed to demonstrate that the district court order should be reversed. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 607, 503 P.2d 9, 13 (1972) ("It is appellants' burden to show that the findings and judgment of the trial court were not based upon substantial evidence or were clearly erroneous."), superseded by statute on other grounds as recognized by Countrywide Home Loans v.

¹Appellants did not file a reply brief.

Thitchner, 124 Nev. ___, 192 P.3d 243 (2008). Consequently, the district court's order is affirmed.²

It is so ORDERED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Robert H. Perry, District Judge
Leonard I. Gang, Settlement Judge
Anthony R. Lopez
Attorney General/Reno
Stanley H. Brown Jr.
Sparks City Attorney
Washoe District Court Clerk
Supreme Court Law Librarian

²In discussing discretionary-function immunity, the opening brief fails to cite and analyze this matter under the controlling standard, as set forth in Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007). Appellants' arguments as to discretionary-function immunity and duty lack merit, and therefore, affirmance is appropriate for that reason as well. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, ___, 181 P.3d 670, 672 (2008) (explaining that we review orders dismissing for failure to state a claim rigorously, construing the pleadings liberally and drawing every inference in favor of the nonmoving party).

Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.