

IN THE SUPREME COURT OF THE STATE OF NEVADA

APRIL JACOBS, PARENT AND
NATURAL GUARDIAN OF RYAN
BRUNE, A DECEASED MINOR ON
BEHALF OF THE DECEASED MINOR,
THE MINOR'S ESTATE, AND ON HER
OWN BEHALF,
Appellant,
vs.
KINDER MORGAN ENERGY
PARTNERS, LP,
Respondent.

No. 56816

FILED

JUL 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a tort action. Tenth Judicial District Court, Churchill County; David A. Huff, Judge.

Having reviewed the briefs and appendices on appeal, we conclude that the district court erred in granting summary judgment to respondent, and we reverse the district court's summary judgment and remand this case for further proceedings.¹

Summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. NRCP 56(c); Wood v. Safeway, Inc., 121 Nev.

¹In its answering brief, respondent argues that this court should disregard appellant's opening brief due to noncompliance with NRAP 28. Although we do not approve of appellant's failure to comply with NRAP 28's requirements, considering our general policy to decide cases on the merits, we decline respondent's request to disregard the opening brief. See Price v. Dunn, 106 Nev. 100, 105, 787 P.2d 785, 788 (1990).


724, 729, 121 P.3d 1026, 1029 (2005). The moving party in a summary judgment motion bears the initial burden of demonstrating that no material issues of fact exist. NRCP 56(c); Maine v. Stewart, 109 Nev. 721, 726-27, 857 P.2d 755, 758-59 (1993). When the party moving for summary judgment does not bear the burden of persuasion at trial, it can satisfy the initial summary judgment burden by “either (1) submitting evidence that negates an essential element of the nonmoving party’s claim, or (2) pointing out . . . that there is an absence of evidence to support the nonmoving party’s case.” Francis v. Wynn Las Vegas, LLC, 127 Nev. ___, ___, 262 P.3d 705, 714 (2011) (internal quotation omitted).


Here, respondent bore the initial burden to establish that no material issue of fact existed, and thus, that summary judgment was unwarranted. To support its motion for summary judgment, respondent relied on expert witness testimony from an unrelated case to assert conclusions about appellant’s ability to prove causation in the underlying matter. Respondent did not provide testimony by its own qualified expert nor did it set forth a sufficient foundation for the reliability of the evidence and expert testimony from the unrelated case that was presented. See Hallmark v. Eldridge, 124 Nev. 492, 499-501, 189 P.3d 646, 650-652 (2008) (holding that an expert must be properly qualified to testify as an expert and that the expert’s testimony must be relevant and based on reliable methodology). Thus, respondent, the party moving for summary judgment, did not furnish adequate support to meet its initial summary judgment burden. Maine, 109 Nev. at 726-27, 857 P.2d at 758-59. As a result, the burden did not shift to appellant to respond on the merits and demonstrate the existence of a genuine issue of material fact, id., and

therefore, the district court erred when it granted respondent's motion for summary judgment. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Robert G. Berry, Settlement Judge
Alan S. Levin
Gordon Silver/Reno
Holland & Hart LLP/Reno
Churchill County Clerk