IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS SEDANO, INDIVIDUALLY; AND ALMA GONZALES, INDIVIDUALLY,
Appellants,
vs.
TOSCO JUNIOR HOUSTON, INDIVIDUALLY; KEVIN BROCK HOUSTON, INDIVIDUALLY; HOUSTON'S CRANE SERVICE, LLC, A DOMESTIC LIMITED LIABILITY COMPANY, EACH D/B/A HOUSTON'S CRANE SERVICE,
Respondents.

No. 72783

ORDER OF AFFIRMANCE

Carlos Sedano and Alma Gonzales appeal from an order granting defendants Tosco Junior Houston,[1] Kevin Brock Houston, and Houston's Crane Service, LLC's (collectively "Houston") motion for summary judgment. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Carlos Sedano was working at a residential construction site when Houston's employee, who was operating a crane to install roof trusses, lowered a truss onto Sedano. Sedano and his wife, Alma Gonzales, sued Houston alleging negligence and loss of consortium. Houston moved for

[1]Counsel for respondents recently filed a suggestion of death upon the record informing this court of the death of respondent Tosco Junior Houston. It appears Mr. Houston passed away prior to the entry of the district court judgment that is being challenged in this appeal. Accordingly, it appears this court need not take any action in response to that filing. *See* NRAP 43(a); *See also Walker v. Burkham*, 68 Nev. 250, 229 P.2d 158 (1951).

summary judgment arguing that Sedano was limited to the exclusive remedy of workers' compensation under NRS 616A.020. The district court granted summary judgment. Sedano now appeals, arguing that: 1) the district court erred in granting Houston's motion for summary judgment because the only evidence before the court showed that there was an exception to the exclusive-remedy rule, and 2) the district court's grant of summary judgment was premature because discovery was continuing, including expert discovery.[2]

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting his claims. NRCP 56(e); *see also Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

Sedano first argues that the district court erred in granting Houston's motion for summary judgment because the only evidence before it showed that there was an exception to the exclusive-remedy rule and that he is not limited to workers' compensation under NRS 616A.020 because Houston was performing a major or specialized repair. Houston counters

[2]We do not recount the facts except as necessary to our disposition.

that Sedano is bound by the exclusive-remedy rule because placing a truss on a residential building is not a specialized repair given that it is done in nearly every residential property. We agree.

Nevada employers and co-employees of a person injured in the course of employment are immune from liability under the Nevada Industrial Insurance Act ("NIIA"). NRS 616B.612; *Lipps v. S. Nev. Paving*, 116 Nev. 497, 501, 998 P.2d 1183, 1186 (2000) (stating that co-employees are immune from liability for injuries incurred by other employees during the course of employment under NRS 616B.612(2), NRS 616A.020(1), and NRS 616C.215(2)(a)). Further, the NIIA is "uniquely different from industrial insurance acts of some states in that sub-contractors and independent contractors are accorded the same status as employees" and are immune from liability. *Meers v. Haughton Elevator, a Div. of Reliance Elec. Co.*, 101 Nev. 283, 285, 701 P.2d 1006, 1007 (1985) (internal quotations omitted) (interpreting a prior version of NRS 616C.215); *see also* NRS 616A.210(1) ("[S]ubcontractors, independent contractors and the employees of either [are] deemed to be employees of the principal contractor for the purposes of [the NIIA]."). But, "[a] subcontractor or independent contractor is not a statutory employee if it 'is not in the same trade, business, profession or occupation as the [employer of the injured worker].'" *D & D Tire v. Ouellette*, 131 Nev. ___, ___, 352 P.3d 32, 35 (2015) (quoting NRS 616B.603(1)(b)). Regarding subcontracting maintenance activities, "[t]he general rule is that major repairs, or specialized repairs of the sort which the employer is not equipped to handle with his own force, are held to be outside his regular business." *Meers*, 101 Nev. at 286, 701 P.2d at 1007-08 (internal quotations omitted).

In *D & D Tire, Inc. v. Ouellette*, an employee of Allied, hired to perform tire service work on mining equipment, was injured when an employee of a third-party, Purcell, who was repairing the Allied employee's truck, backed the truck into the Allied employee. 131 Nev. at ___, 352 P.3d at 34. The supreme court concluded that the Purcell employee was sent to the work site for the purpose of specialized repairs on the truck and therefore was not a statutory employee of Allied. *Id.* at ___, 352 P.3d at 37.

Here, we conclude that Houston was not performing a specialized repair, and therefore, Sedano is bound by the exclusive remedy rule under NRS 616B.612. Because Sedano's employer was not qualified to use the cranes to install the trusses, it hired Houston to perform the crane work on the project. But unlike in *D & D Tire* where the employee causing the injury was hired to complete a job ancillary to the employer's primary project, here, Houston was hired to provide a service directly in furtherance of the overall project (i.e., building a residential structure)." *See Meers*, 101 Nev. at 285 n.3, 701 P.2d at 1007 n.3 ("It is easy to see that in the construction business, sub-contractors and independent contractors will invariably be held to be statutory employees of the general contractor."). Therefore, pursuant to the considerations set forth in *D & D Tire*, the district court here did not err in granting summary judgment in favor of Houston because Houston was not performing a specialized repair to be excused from the exclusive-remedy provision in NRS 616A.210.

Next, Sedano argues that the district court's grant of summary judgment was premature because discovery was continuing, including expert discovery. Houston counters that Sedano did not seek relief under NRCP 56(f) and his requests for a continuance to conduct additional

discovery in his opposition and at the hearing for the motion for summary judgment did not comply with NRCP 56(f). We agree.

We review a decision to grant or deny a continuance of a motion for summary judgment to allow further discovery for an abuse of discretion. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011). Under NRCP 56(f), "a court may, in its discretion, refuse an application for summary judgment or order for a continuance, '[s]hould it appear from the affidavits of a party opposing the motion that the party cannot . . . present by affidavit facts essential to justify the party's opposition.'" *Bakerink v. Orthopaedic Assocs. Ltd.*, 94 Nev. 428, 431, 581 P.2d 9, 11 (1978). The Nevada Supreme Court requires—not merely recommends—the party invoking NRCP 56(f) protections to affirmatively demonstrate how discovery or other means will lead to the creation of a genuine issue of material fact. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 669-70, 262 P.3d 705, 714 (2011).

Here, although Sedano argued in his opposition and at the hearing on the motion for summary judgment that granting the motion would be premature because he needed more time to conduct discovery, he failed to submit an affidavit explaining his reasons for continued discovery in his opposition to the summary judgment motion pursuant to NRCP 56(f). *See Choy*, 127 Nev. at 872, 265 P.3d at 700 (affirming the district court's denial of a request for a continuance of a motion for summary judgment because the party "did not provide an affidavit in support of his request for a continuance . . . in order to conduct discovery" and "the paragraph included in [the party's] opposition, requesting a continuance of the motion, was not substantially compliant with NRCP 56(f)"). Thus, because Sedano

did not comply with the NRCP 56(f) requirements, we conclude that the district court's grant of summary judgment was not premature.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Lansford W. Levitt, Settlement Judge
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