IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRENDA MARTZ-ALVARADO, AN INDIVIDUAL,
Appellant,
vs.
TOMI TRUAX, AN INDIVIDUAL; FORREST RIDDLE, AN INDIVIDUAL; AND GEORGIA RIDDLE, AN INDIVIDUAL,
Respondents.

No. 76860-COA

FILED

MAY 20 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brenda Martz-Alvarado appeals a district court order granting summary judgment to Forrest and Georgia Riddle and an order granting summary judgment to Tomi Truax.[1] Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Tomi Truax's sister, Tami, owned a property in Henderson, Nevada.[2] In 2014, Tami was struggling financially and was going to lose the property. Tomi and Tami's father approached Forrest and Georgia Riddle about purchasing the property, which the Riddles then purchased from Tami. The Riddles immediately leased the property to Tomi Truax.

[1]All parties agree that the correct respondent to this proceeding is Tomi Truax, not her sister Tami Truax, as the claims against Tami were voluntary dismissed without prejudice on July 2, 2019, in response to the supreme court issuing an order to show cause. The clerk of this court is directed to amend the caption on this court's docket in accordance with this order's caption.

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

The lease included an option where she could purchase the property at the end of the lease term.

Tomi was running a business at the property operating under the name Grand View Horse Tours. Patrons could purchase guided horse tours and Tomi would provide the horse and the tour guide. The tours started at the Henderson property and went out into the desert.

In January 2015, Martz-Alvarado purchased a trail-riding experience through a third party website. As part of securing her reservation, Martz-Alvarado agreed to a waiver of liability. The waiver indicated that Martz-Alvarado understood "that being around horses is inherently dangerous" and that she would assume all risks. She also explicitly agreed to waive any claims against "owners, officers, staff members, volunteers, affiliated organizations, land owners, and agents for any injury or death" stemming from horseback riding. The waiver identified the business' name as Las Vegas Trail Riding.

On February 1, 2015, Martz-Alvarado went to the Henderson property for her trail ride with a friend. Upon arrival, they were given another waiver of liability form. This waiver form provided that Martz-Alvarado was "giving up certain legal rights, including the right to sue or recover damages in case of injury, death or property damages, for any reason, including but not limited to, the negligence of the stable, its owner, employees and agents [of] 'Vegas Horse Tours.'" Furthermore, this waiver form included another provision stating, "WARNING: Under *NEVADA STATE law* an equine professional and equine activity sponsor is not liable for any injury to or death of a participant in equine activities resulting from the inherent risks of equine activities." Martz-Alvarado signed the release and went on the ride.

At the conclusion of the trail ride, Martz-Alvarado was having difficulty dismounting the horse. Tomi provided a platform to help patrons mount and dismount horses, which Martz-Alvarado used to initiate the ride. While the exact mechanics of how Martz-Alvarado fell are disputed, Martz-Alvarado was attempting to dismount the horse using the platform, but fell, breaking her leg, making no contact with the platform before or as she fell.

Martz-Alvarado sued the Riddles and Tomi Truax. The Riddles moved for summary judgment, which the district court granted, concluding that Martz-Alvarado had not shown that the Riddles owed her a duty of care and, alternatively, that one of the waivers she signed waived all liability as to landowners. A few months later, Tomi moved for summary judgment. The district court summarily granted the motion, apparently concluding that the waiver signed by Martz-Alvarado released Tomi from liability.

On appeal, Martz-Alvarado argues that the district court erred when it granted summary judgment to the Riddles and Tomi based on the waivers. She argues that the different entity names on the waivers creates a dispute of material fact, parties cannot contract out of their negligence, the Vegas Horse Tour waiver did not include the use of the platform, and the Vegas Horse Tour waiver is void under public policy. Martz-Alvarado also argues the district court erred when it granted summary judgment to the Riddles because the facts show that the Riddles and Tomi were part of a joint enterprise. We disagree.

A district court's decision to grant summary judgment is reviewed 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 demonstrate that no genuine issue of material fact exists and that

the moving party is entitled to judgment as a matter of law. *Id.* All evidence must be viewed in a light most favorable to the nonmoving party. *Id.*

Martz-Alvarado argues that the two waivers create an ambiguity that should be resolved by a jury because they identify different business names. However, at no point does Martz-Alvarado allege that Tomi Truax was not the sole proprietor of the businesses. Tomi testified in her deposition that she ran her business under several different names. "An individual doing business as a sole proprietor, even when business is done under a different name, remains personally liable for all of the obligations of the sole proprietorship." 18 C.J.S. *Corporations* § 4; *see also Providence Washington Ins. Co. v. Valley Forge Ins. Co.*, 50 Cal. Rptr. 2d 192, 194 (Ct. App. 1996) (holding that a car registered in a sole proprietor's trade name is owned by the sole proprietor). Even though the business names on the waivers are different, there is no dispute that Tomi is the sole proprietor responsible for those businesses, and is subject to suit in her individual capacity. Thus, there is no genuine dispute of *material* fact as it pertains to the names of the businesses. *See Wood*, 121 Nev. at 730, 121 P.3d at 1030 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." (*quoting Anderson v. Liberty Lobby*, 477 U.S. 242, 247-48 (1986))).

Martz-Alvarado also argues that parties cannot contract out of negligence.[3] In Nevada, exculpatory provisions are "generally regarded as

---

[3]To the extent that Martz-Alvarado argues that use of the platform or mounting or dismounting is not covered by the Vegas Horse Tour waiver, we disagree. Here, the Vegas Horse Tour waiver does not mention mounting or dismounting or the use of the platform. However, the Vegas

a valid exercise of the freedom of contract." *Miller v. A & R Joint Venture*, 97 Nev. 580, 582, 636 P.2d 277, 278 (1981). Furthermore, the supreme court has upheld exculpatory-waiver contracts that waive negligence claims. *See id.*; *see also Waldschmidt v. Edge Fitness, LLC*, Docket No. 71588 at *1-2 (Order of Affirmance, May 15, 2018). Thus, in Nevada parties can contract out of general negligence.[4]

Next Martz-Alvarado argues that the Vegas Horse Tours waiver is void on the basis of public policy because it contains a misstatement of the law. She does not identify any specific public policy other than citing to *Havas v. Alger*, 85 Nev. 627, 632, 461 P.2d 857, 860 (1969), for the policy that courts will not legalize fraud. However, *Havas* deals with fraud in the inducement of a contract. *Id.* at 632, 461 P.2d at 859. The elements for fraud in the inducement require Martz-Alvarado to show

---

Horse Tour waiver does have a provision that includes the use of equipment and allocates the risk of injury in handling or riding horses to the rider. Furthermore, Martz-Alvarado points to nothing in the record, including her own deposition, to suggest that she believed the waiver did not include using the platform or the act of dismounting from a horse. Thus, there is no genuine dispute of material fact and this argument is unpersuasive.

[4]Martz-Alvarado's complaint and amended complaint do not allege gross negligence nor does she allege or argue gross negligence in her opening brief, and thus, we do not consider it. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Furthermore, in her reply brief, Martz-Alvarado does argue with citations to authority that gross negligence cannot be contracted away, but does not cogently argue that the events here rose to the level of gross negligence. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that arguments not cogently argued need not be considered).

> (1) a false representation made by [Tomi], (2) [Tomi's] knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation), (3) [Tomi's] intention to therewith induce [Martz-Alvarado] to consent to the contract's formation, (4) [Martz-Alvarado's] justifiable reliance upon the misrepresentation, and (5) damage to [Martz-Alvarado] resulting from such reliance.

J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc., 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (footnotes omitted). Martz-Alvarado does not argue any of these elements, and while the record may support some of the elements, the record definitively does not support the fourth element. Martz-Alvarado was specifically asked about the language at issue in her deposition, and at no time did she suggest that she relied on the language of the waiver. While Martz-Alvarado argues that the contract was void under public policy because Nevada does not enforce contracts entered into by fraud, the defense of fraud in the inducement has particular elements that she has not argued or shown. *See Edwards,* 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Finally, Martz-Alvarado argues that whether a waiver is valid is a question for the jury. Martz-Alvarado cited no authority in her opening brief to support that proposition. *See id.* In her reply brief, she cites to *Parkinson v. Parkinson,* 106 Nev. 481, 483, 796 P.2d 229, 231 (1990). However, *Parkinson* does not deal with exculpatory waivers, but instead addresses whether a party can assert waiver as a defense to the

enforcement or modification of child support. Thus, the authority Martz-Alvarado cites is inapplicable.[5]

Based on the forgoing, we conclude the waivers are valid and release both the Riddles and Tomi Truax from liability for any negligence.[6] Accordingly,[7] we

---

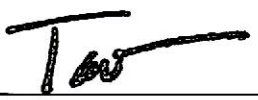
[5]We do recognize that whether a contract exists is a question of fact. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). "Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *Id.* at 672, 119 P.3d at 1257. However, Martz-Alvarado points to no facts that suggest that the contracts she signed did not meet those requirements (i.e., she does not argue or point to any facts that negate the requirements of a valid contract). Thus, even if contract formation is normally a question for the jury, there must be a genuine dispute of fact to avoid summary judgment. Martz-Alvarado has not shown a genuine dispute of fact pertaining to the formation of the waiver contracts.

[6]To the extent that Martz-Alvarado argues that she did not assume the risk expressly or impliedly, this point was not raised in her opening brief and is waived. *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 ("Issues not raised in an appellant's opening brief are deemed waived."). Additionally, even though she argues in her reply that she did not understand the risks associated with horseback riding, both waivers contained language indicating that she understood that there were inherent dangers in horseback riding and that she assumed all risks voluntarily. Thus, Martz-Alvarado expressly assumed the risk. *See Waldschmidt v. Edge Fitness, LLC*, Docket No. 71588 at *1-2 (Order of Affirmance, May 15, 2018) (concluding that a plaintiff assumed the risk, despite his claims that he lacked knowledge of the risks involved, where the exculpatory clause stated that the plaintiff knowingly and freely assumed all risks).

[7]In light of our disposition, we need not address whether the district court erred when it concluded Martz-Alvarado had not shown the Riddles owed her a duty of care. Nevertheless, we note that as landowners, the Riddles did not owe Martz-Alvarado a duty of care because they did not promise to remedy any dangerous condition on the land. *See Wright v. Schum*, 105 Nev. 611, 612-13, 781 P.2d 1142, 1142-43 (1989) (noting that a

ORDER the district court's judgments AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Cogburn Law Offices
Mushkin & Coppedge
Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.
Eighth District Court Clerk

---

landlord generally does not owe a duty of care to foreseeable plaintiffs unless the landlord undertakes a duty to remedy a dangerous condition). Furthermore, the record does not support Martz-Alvarado's argument that the Riddles were engaged in a joint enterprise with Tomi. *See* Restatement (Second) of Torts § 491 cmt. c (1965) (requiring that for a joint enterprise to be created and impute liability from one member to another there must be (1) an agreement, (2) common purpose, (3) pecuniary interest in that purpose, and (4) equal right to direct the enterprise). Here, the record does not support an inference that all four elements are present.