IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEOPOLDO MENDEZ, INDIVIDUALLY; AND CLARK COUNTY SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Appellants,
vs.
ANTONIO SOTO, INDIVIDUALLY,
Respondent.

No. 82809-COA

ORDER OF AFFIRMANCE

Leopoldo Mendez and the Clark County School District (collectively appellants) appeal from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

The underlying action arose from a motor vehicle collision, where Mendez was driving a CCSD utility truck and struck the rear end of another CCSD vehicle that in turn pushed into the rear end of respondent Antonio Soto's vehicle.[1] As a result, Soto made a claim for bodily injuries and property damage to his vehicle. He subsequently filed a complaint in January 2020 alleging negligence against appellants and alleging negligent entrustment solely against CCSD.

In March 2020, the Eighth Judicial District Court issued administrative orders in response to the COVID-19 pandemic that stayed the time to respond to written discovery. On April 17, 2020, a few days before the parties filed their joint case conference report (JCCR), Soto

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

served discovery requests on appellants including interrogatories, requests for production of documents, and requests for admission. Appellants acknowledged receiving the discovery requests and requested an extension of time to June 22, 2020, to respond to the discovery. Soto agreed to the extension. On July 1, 2020, the automatic stay due to the COVID-19 pandemic was lifted, and the deadlines for responding to all forms of discovery resumed.[2] CCSD failed to respond to the discovery, including the requests for admission, by the agreed upon June 22, 2020, deadline, or any other time prior to the filing of Soto's motion for summary judgment, and the admissions were deemed admitted pursuant to NRCP 36(a).

In January 2021, Soto filed a motion for summary judgment based on the admissions. Appellants filed an opposition to the motion, requesting additional time to respond to the requests for admission and arguing that Soto's motion should be denied because the discovery "fell through the cracks." Appellants also contended that granting the motion for summary judgment would prevent the case from being heard fully on the merits. The district court, after conducting a hearing, granted Soto's motion for summary judgment, and awarded damages of $100,000, the statutory cap on tort damages available against CCSD.[3] This appeal followed.

On appeal, appellants argue that the district court: (1) abused its discretion in granting Soto's motion for summary judgment because the

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[2]*See* Eighth Judicial District Court Administrative Order 20-17 (stating that "the tolling of discovery deadlines will end on July 1, 2020").

[3]*See* NRS 41.035 (2019), which governed the statutory tort cap of damages allowed against CCSD, a political subdivision of the State of Nevada, at the time of the collision.

district court did not properly evaluate NRCP 36, as the court believed it was mandatory to deem the admissions as admitted and should have extended the time for appellants to respond to the requests for admission; (2) erred in granting Soto's motion for summary judgment because it failed to take into consideration COVID-19 protocols; (3) erred in granting Soto's motion for summary judgment as the requests for admission were improper because they sought admission to things that were legal based or required expert testimony; (4) erred in deeming the admissions admitted as the requests for admission were served before the JCCR was filed; (5) erred in awarding judgment in Soto's favor without proper authentication as to causation and damages; and (6) committed reversible error by preventing this case from being heard on the merits. Soto contends that NRCP 36 deems admissions as admitted when they are not timely responded to, and that, in the absence of a motion to withdraw or amend the admissions, the district court was within its discretion to grant summary judgment because no genuine disputes of material fact remained based on the admissions. Soto further argues that appellants' remaining arguments were waived or are belied by the record.

Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact. NRCP 56(a).[4] 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 on file "demonstrate that no

[4]The pre-2019 language of NRCP 56(a) is "no genuine issue of material fact," while the current NRCP 56(a) language is "no genuine dispute as to any material fact." However, the standard of review remains the same, and therefore, this revision to the language has no legal effect on the jurisprudence of the cited cases. *See* Advisory Committee Note (2019).

genuine issue of material fact remains, and the moving party is entitled to judgment as a matter of law." *Id.* (internal quotations omitted). When deciding a motion for summary judgment, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 729, 121 P.3d at 1030-31. Instead, "to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

Moreover, discovery matters are generally within the district court's discretion and will not be disturbed unless the court has clearly abused its discretion. *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 839, 359 P.3d 1106, 1110 (2015). An abuse of discretion occurs when the decision is "arbitrary, fanciful, or unreasonable, or where no reasonable [person] would take the view adopted by the trial court." *Imperial Credit Corp. v. Eighth Judicial Dist. Court*, 130 Nev. 558, 563, 331 P.3d 862, 866 (2014) (internal quotation marks omitted).

Under NRCP 36(a)(3), once a request for admission is served, "[the] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Courts consider any matter admitted under NRCP 36 to be "conclusively established unless the court, on motion, permits the admission to be withdrawn or amended." NRCP 36(b). Here, the parties agreed in writing that appellants would have until June 22, 2020, to respond to the

written discovery.[5] Appellants failed to respond to the requests for admission by this agreed upon date or any time prior to the filing of the summary judgment motion. Accordingly, the matters contained in the requests for admission are deemed admitted and considered conclusively established, "even if the established matters are ultimately untrue." *Smith v. Emery*, 109 Nev. 737, 742, 856 P.2d 1386, 1389-90 (1993).[6] Admissions deemed admitted for failure to respond "may properly serve as the basis for summary judgment." *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 630, 572 P.2d 921, 923 (1977). Importantly, appellants failed to withdraw or amend the admissions, which was an available remedy to them, even after Soto moved for summary judgment. We note that in similar contexts, the supreme court has affirmed the lower court's grant of summary judgment. *See e.g. Allen v. Nelson*, Nos. 52632, 52926, 2010 WL 3341511 (Nev. Jun. 10, 2010) (Order Affirming in Part and Reversing in Part and Order Dismissing Appeal) (affirming a grant of summary

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[5]To the extent appellants argue the district court should have considered the requests for admission improper, either substantively or procedurally, because they were propounded before the JCCR was filed, we are not persuaded by this argument because appellants agreed to answer the requests by a certain date after the JCCR was filed, which was confirmed in writing.

[6]Appellants argue that the district court felt that it was mandatory to accept the admissions and grant summary judgment without giving appellants additional time to respond to the requests for admission. We disagree. The district court understood that it had the authority to grant or deny the motion for summary judgment, notwithstanding the appellants' failure to respond to the requests for admission thereby deeming them admitted. This is supported by the record as the district court specifically acknowledged that if the motion for summary judgment had been filed in July 2020, it would have been denied.

judgment where a party never sought to withdraw or amend admissions under NRCP 36(b), and based on the admissions, no genuine issues of fact remained).

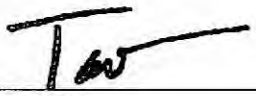
Appellants argue that the district court failed to take the COVID-19 pandemic into consideration in determining whether to grant appellants additional time to respond to the requests for admission. We are unpersuaded by this contention. At the hearing, the district court specifically stated that the COVID-19 pandemic "played a part" in the delays, but ultimately concluded that the failure to answer the requests for admission, months after the tolling period lapsed, did not constitute excusable neglect. This is compounded by the fact that appellants responded to the requests for admission served on CCSD only after the motion for summary judgment was filed in January 2021, and not by the agreed upon deadline or any time prior to the filing of the summary judgment motion and Mendez never responded. Accordingly, the district court did not abuse its discretion in granting summary judgment, pursuant to NRCP 36, given appellants' failure to timely respond to the requests for admission.

Consequently, by failing to serve timely responses to Soto's requests for admission, appellants admitted (1) Mendez rear-ended a vehicle, which was pushed into Soto's vehicle; (2) Mendez caused Soto's injuries and damages; (3) Soto's medical treatment was reasonable and necessary; and (4) Soto bore no fault. Such admissions leave no room for conflicting inferences. As a result, we perceive no error of law in the district

court's granting of summary judgment in Soto's favor.[7] *See Wagner*, 93 Nev. at 630, 572 P.2d at 923. Therefore, we

ORDER the amended judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

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Bulla

cc: Hon. Tara D. Clark Newberry, District Judge
Stephen E. Haberfeld, Settlement Judge
Clark County School District Office of The General Counsel
The Powell Law Firm
Eighth District Court Clerk

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[7]While appellants argue that the district court prevented this case from being heard on the merits, Nevada's policy in favor of resolving cases on the merits does not permit litigants to "disregard process or procedural rules with impunity." *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968). Therefore, we are not persuaded by this argument.