IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT,
Appellant,
vs.
JUSTIN SMITH, AN INDIVIDUAL,
Respondent.

No. 84259-COA

ORDER OF AFFIRMANCE

Clark County School District appeals from the findings of fact, conclusions of law, and judgment following a bench trial in a tort case. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.[1]

Justin Smith attended Beacon Academy of Nevada (Beacon), a charter school, during his junior year of high school. Since Beacon had no athletic programs, Smith was allowed to participate in athletic programs offered by the Clark County School District (CCSD) at the school that he was zoned for, Durango High School (Durango). Smith participated in Durango's athletic programs, specifically the track and field team.

During a meet, a picture was taken of him running. This color picture was then used in the official school yearbook. The picture shows what the short trial judge described as what "*appears* to be a relatively lengthy protuberance, coming directly out of the middle of Plaintiff's crotch area, that cannot be ignored." Smith, and many of his fellow students,

[1]This case was resolved in the short trial program by Thomas J. Tanksley, Esq. The district court then determined that judgment could be entered.

believed this protuberance to be Smith's exposed genitals. The creation and publication of the official school yearbook was overseen by a faculty supervisor as confirmed at oral argument. After the yearbook was distributed, Smith felt embarrassed and humiliated. He was bullied by fellow students. Because of the embarrassment, humiliation, and teasing and harassment, Smith received counseling for eighteen months.

In April 2019, Smith filed a complaint against CCSD asserting causes of action for negligence and negligent supervision. The matter proceeded to court-annexed arbitration, and the arbitrator found in favor of the school district in a summary decision. Smith filed a timely request for a trial de novo, and the case was put in the short trial program. A one-day bench trial was held in January 2022. The short trial judge found in Smith's favor and awarded Smith $5,000 in general damages and $1,000 in special damages for counseling Smith received before trial. The district court entered judgment in May 2022 and attached the short trial judge's findings of fact and conclusions of law.

On appeal, CCSD argues that the short trial judge erred by failing to identify what duty the school district owed to Smith and failing to properly apply the elements of negligence. The school district also argues that the short trial judge abused his discretion when he awarded damages because it was not shown that CCSD caused the damages and there was not enough evidence to support the award of special damages. We disagree.

The short trial judge did not err in finding negligence

CCSD argues that the short trial judge abused its discretion because it made conclusory findings that negligence had been established without reference to a duty owed to Smith. Smith responds that the school district both failed to provide a sufficient record for our review and also failed to request a directed verdict, such that CCSD's argument was not preserved.

CCSD replies that it has provided an adequate record to overturn the short trial judge's findings of fact and conclusions of law and a motion for directed verdict is not required.[2]

This court reviews de novo a district court's legal conclusions following a bench trial. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). "The district court's factual findings will be left undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Id.* An appellant has the responsibility to provide an adequate record on appeal. NRAP 30(b)(3). An appellant can provide a transcript of the trial or prepare a statement pursuant to NRAP 9(d).[3] This court presumes that whatever is missing from the record supports the district court's ruling. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

To prevail on his negligence claim, Smith had to show that the school district owed him a duty of care, that the school district breached that duty, that the breach was the legal cause of his injuries, and that he suffered damages. *See Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 777, 291 P.3d 150, 153 (2012). "[T]he question of whether the defendant owes the plaintiff a duty of care is a question of law." *Rodriquez v. Primadona Co.*, 125 Nev.

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[2]We note that neither party provides any applicable legal support for their arguments regarding a directed verdict and neither party makes a cogent argument. Accordingly, we decline to address this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

[3]NRAP 9(d) provides that an "appellant may prepare a statement of the evidence from the best available means." After the statement is approved it is then included in the trial record. NRAP 9(d).

578, 584, 216 P.3d 793, 798 (2009). While Nevada has not specifically addressed this issue other jurisdictions have held that "school districts are held to a standard of *ordinary* care to protect their students from foreseeable harm." *See Hendrickson v. Moses Lake School District*, 428 P.3d 1197, 1202-03 (Wash. 2018). Additionally, in Nevada, a special relationship exists between teachers and students. *Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212 (2001). An event is foreseeable if it is reasonably anticipatable. *See Foreseeability*, *Black's Law Dictionary* (11th ed. 2019).

CCSD is correct that the short trial judge never explicitly stated in his written findings that the school district owed a duty to Smith. However, CCSD does not cite any authority that the short trial judge was required to make individual findings. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). The verdict here did make several individual findings because the short trial judge issued findings of fact and conclusions of law. However, because there is no trial transcript in the record, we cannot determine what other findings he made either during or at the conclusion of the trial. These findings could have been used to clarify and supplement his written findings. *See Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011) (stating that oral pronouncements can assist the court in construing a vague or ambiguous order).

Generally, a special relationship exists between a school and its students, *Lee*, 117 Nev. at 295, 22 P.3d at 212, which in this case created a duty of care between CCSD and Smith. CCSD assumed the duty to supervise the publication of the official school yearbook and refrain from publishing obscene, raunchy photographs, or photographs that appeared to

be obscene. As to the foreseeability of harm to Smith from publication of the yearbook photograph, the short trial judge found that the photograph is something that "one would have to methodically make a close inspection of and cogitate about to try to *not* see it as obscene, degrading and/or raunchy." Further, the judge found that "[i]t was foreseeable to those involved in putting together and approving the Durango High School yearbook that Plaintiff would have suffered embarrassment and humiliation" even from knowing that a photograph of this nature was published in the official school yearbook. Therefore, the short trial judge found that it was foreseeable that others would see the photograph, causing Smith harm. Accordingly, while not stated explicitly, the short trial judge correctly found that a duty of care existed between the school district and Smith. *See Welland v. Williams*, 21 Nev. 230, 234, 29 P. 403, 404 (1892) (stating that in order for this court to review an alleged error upon an implied finding there must have been a request for an express finding on that issue).

The school district also broadly argues that the short trial judge failed to address the elements of negligence and specifically discussed foreseeability instead. As discussed above, foreseeability is part of establishing duty. Therefore, the discussion of foreseeability was proper. Turning to the other elements of negligence, the school district fails to make an argument addressing how the short trial judge failed to properly apply the other elements of negligence. Accordingly, we need not consider this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also Senjab v. Alulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

Even if we consider the merits of the school district's argument, the short trial judge's findings are supported by substantial evidence. As

discussed above, the school district had a duty of care to Smith. This duty was breached when the school district published the embarrassing photograph of Smith in the official high school yearbook. Additionally, CCSD does not reasonably contest the short trial judge's finding that the photograph appears to be "obscene, degrading and/or raunchy." The short trial judge found that Smith was embarrassed and humiliated by the photograph, and that Smith was teased and harassed because of the photograph. The school district does not dispute this finding. Therefore, the legal cause of Smith's injury was the publication of the photograph. Accordingly, the short trial judge did not err when he found in favor of Smith.

The short trial judge did not err when he awarded damages

CCSD argues that the short trial judge abused his discretion by awarding damages because it is not clear how Smith's damages were caused by the school district. CCSD also argues that the short trial judge erred by failing to explain why he awarded $1,000 in special damages. Smith responds that the school district failed to provide a sufficient record.

The school district specifically argues that, as the short trial judge correctly found that the school district was not responsible for any independent and tortious conduct by a third party, it therefore was not responsible for any of the damages allegedly suffered by Smith because all of his damages arose from what others said about the photograph. This argument ignores the finding that Smith also suffered embarrassment and humiliation "from knowing that all the other high school students at Durango saw the subject photo." Accordingly, the short trial judge properly found that the school district caused Smith embarrassment and humiliation.

The school district also argues that the short trial judge awarded $1,000 in special damages for counseling but failed to explain how he

reached that figure.[4] The short trial judge found that Smith should have only needed "a few" counseling sessions to deal with the embarrassment and humiliation he suffered and that he attended an excessive number of sessions. Because of this finding, the short trial judge awarded Smith only $1,000 instead of the $15,600 Smith requested for reimbursement of counseling costs. The record reveals that Smith attended weekly counseling sessions for at least 18 months. The cost of these weekly sessions was $150. The school district is correct that the short trial judge did not explain how it determined that roughly only six counseling sessions were needed to assist Smith. But the school district fails to provide any legal authority or to cogently argue why this was a reversible error by the short trial judge. Accordingly, we need not consider the argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

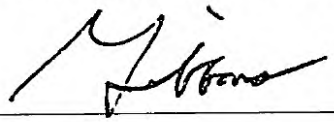
Even if we consider the argument, there remains a wide latitude in awarding special damages. *Countrywide Home Loans, Inc. v. Thitchner*, 124 Nev. 725, 737, 192 P.2d 243, 251 (2008). Additionally, as "long as there is an evidentiary basis for determining an amount that is reasonably accurate, the amount of special damages need not be mathematically exact." *Id.* The short trial judge determined that although 18 months of counseling was excessive for the events suffered by Smith, some counseling was still needed. It appears that the short trial judge decided that "a few" counseling sessions was equivalent to roughly six sessions. Nothing in the record provided to this court explains how the short trial judge arrived at this figure, but the school district failed to provide a transcript of the trial and

[4]The school district does not raise an argument about the $5,000 in general damages awarded to Smith except that no damages should have been awarded.

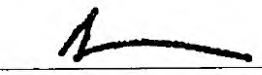
failed to prepare a statement pursuant to NRAP 9(d). It was the school district's responsibility to provide an adequate record on appeal. NRAP 30(b)(3). To that end, we presume that whatever is missing from the record supports the court's ruling. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Therefore, CCSD has not demonstrated that the short trial judge committed reversible error when he awarded Smith damages including $1,000 in special damages.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]



_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Clark County School District Office of The General Counsel
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Eighth District Court Clerk

[5]Insofar as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.