

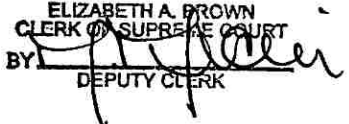
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER ALLEN KENIS,  
Appellant,  
vs.  
MGM RESORTS INTERNATIONAL, A  
DELAWARE CORPORATION;  
MANDALAY RESORT GROUP, A  
NEVADA COMPANY; MANDALAY BAY  
LLC, F/K/A MANDALAY CORP., A  
NEVADA LIMITED-LIABILITY  
COMPANY; MGM RESORTS FESTIVAL  
GROUNDS, LLC, A NEVADA  
DOMESTIC LIMITED-LIABILITY  
COMPANY; AND MGM RESORTS  
VENUE MANAGEMENT, LLC, A  
NEVADA LIMITED-LIABILITY  
COMPANY,  
Respondents.

No. 84160-COA

**FILED**

JAN 12 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Roger Allen Kenis appeals from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Kenis attended the Route 91 Harvest music festival in Las Vegas on October 1, 2017, during which a gunman opened fire on concertgoers from a room in the Mandalay Bay Resort and Casino overlooking the festival grounds. After Kenis opted out of a mediated settlement reached in subsequent litigation concerning the shooting, he filed the underlying action in pro se against respondents (collectively MGM), setting forth purportedly separate causes of action for breach of the duty of care, negligence, fraud, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. In relevant

part, Kenis alleged that he suffered damages as a result of MGM's failure to adequately protect concertgoers from the risk of a mass shooting or appropriately respond to the shooting once it began, and that MGM had defrauded its insurer to the detriment of all claimants in connection with the earlier mediated settlement.

After answering Kenis' complaint, MGM moved for judgment on the pleadings as to the claims for fraud, breach of the implied covenant of good faith and fair dealing, and intentional infliction of emotional distress. The district court entered an order granting the motion over Kenis' opposition, dismissing the claims with prejudice but providing that Kenis could seek leave to file an amended complaint if he so desired. When Kenis later filed a motion summarily requesting such relief, the district court denied it on grounds that Kenis failed to submit a proposed amended complaint with the motion as required under EDCR 2.30(a).

MGM ultimately moved for summary judgment on the remaining claims, which Kenis opposed. The district court granted the motion, concluding that Kenis' claims for "breach of the duty of care" and negligence essentially stated a single claim of negligence, which failed as a matter of law under both innkeeper and standard common law theories of liability. This appeal followed.

On appeal, Kenis sets forth multiple arguments in favor of reversal on appeal. First, he contends that then-Chief Judge Bell should have recused herself from this case due to her personal and professional relationship with former district court judge Jennifer Togliatti, who was one of the mediators that facilitated the settlement with October 1 victims from which Kenis had opted out. But we discern no abuse of discretion in Judge Bell's denial of Kenis' request for recusal below. *See Ivey v. Eighth Judicial*

*Dist. Court*, 129 Nev. 154, 162, 299 P.3d 354, 359 (2013) (reviewing a district court's decision concerning disqualification for an abuse of discretion). At the hearing on Kenis' request, Judge Bell acknowledged her longtime friendship with Judge Togliatti but stated that she "ha[d] no concern about [her] ability to be fair and impartial in this case and make objective decisions." And Kenis provides no reason for this court to doubt Judge Bell's conclusion on this point. *See Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254-55, 148 P.3d 694, 701 (2006) (noting that judges are presumed to be unbiased and that "disqualification for personal bias requires an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice" (alteration and internal quotation marks omitted)). Moreover, as alluded to by Judge Bell at the hearing, and as she later ruled on MGM's motion for partial judgment on the pleadings, to the extent Kenis based the underlying action on supposed improprieties in the mediation process overseen by Judge Togliatti, he opted out of the resulting settlement and therefore lacks standing to challenge those proceedings in this matter.<sup>1</sup> Thus, any supposed bias stemming from Judge Bell's relationship with Judge Togliatti was ultimately irrelevant to the underlying action.

Next, Kenis contends the district court erred in granting summary judgment to MGM on his innkeeper liability and general negligence-based claims. In response, MGM argues, among other things,

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<sup>1</sup>On appeal, Kenis fails to cogently challenge this conclusion or any other aspect of the district court's order granting partial judgment on the pleadings in favor of MGM. Thus, we do not address these decisions in resolving this appeal. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

that Kenis failed to present any evidence of his alleged injuries and thus, in the absence of any demonstrated damages, the grant of summary judgment in its favor was proper.

We review 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 dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* The question of whether a defendant was negligent in a particular case is generally a question of fact for a jury to resolve. *Butler v. Bayer*, 123 Nev. 450, 461, 168 P.3d 1055, 1063 (2007). "To establish entitlement to judgment as a matter of law, a moving defendant must show that one of the elements of the plaintiff's prima facie case, such as duty, breach, causation, or damages, is "clearly lacking as a matter of law." *Id.* (internal quotations omitted).

As noted above, Kenis' negligence claim essentially encompassed both innkeeper-liability and standard theories of negligence. Under both theories, a plaintiff must establish a duty, a breach of that duty, that the breach caused the alleged injury, and damages. *Humphries v. New York-New York Hotel & Casino*, 133 Nev. 607, 609, 403 P.3d 358, 360 (2017) (setting forth these elements in the innkeeper context); *Turner v. Mandalay Sports Entertainment, LLC*, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008) (setting for these elements in the general negligence context). The party claiming injury has "the burden of establishing damages." *Central Bit Supply v. Waldrop Drilling & Pump*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986).

In its answering brief, MGM argues, among other things, that Kenis made “blanket assertions of injury without any supporting evidence” beyond “generic allegation[s] of emotional distress” and that, in opposing summary judgment, Kenis “offered nothing more than mere conjecture to support his damages allegation.” For his part, Kenis summarily asserts that there “are damages in the record,” pointing to a United States Department of Veterans Affairs ledger in support of this contention, which lists a Veterans Affairs claim of \$58,777.84 associated with treatment for an injury Kenis apparently suffered on October 1, 2017.

Here the record demonstrates that, in opposing MGM’s motion for summary judgment, Kenis asserted that he had already incurred damages, in the form of medical costs, that exceeded \$58,000. But Kenis did not attach any documents to his opposition to support that claim or any of the other assertions regarding his alleged damages. Indeed, as the district court recognized at the hearing on MGM’s motion for summary judgment, Kenis did not submit any admissible evidence to support his claims or even provide an affidavit in conjunction with his summary judgment opposition. Instead, he merely pointed to a “master log” listing the items referenced in his opposition which were apparently stored online on a Google drive account. With regard to his claimed damages, Kenis’ “master log” references a ledger, which is described as “medical bills.”

As the plaintiff, Kenis was required to present evidence to support his assertion of damages. *See Cathcart v. Robison, Lyle Belaustegui, & Robb*, 106 Nev. 477, 480, 795 P.2d 986, 987 (1990) (providing that, to recover damages, a plaintiff must prove both the amount and the fact of damages). Thus, when MGM, in moving for summary judgment, highlighted the absence of evidence to support Kenis’ claimed damages,

Kenis was required to present evidence demonstrating an issue of material fact on this point. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). And as illustrated above, he failed to do so. Kenis later sought to address these issues by filing motions to admit, among other things, the Veterans Affairs ledger and an affidavit, but the district court entered its order granting summary judgment to MGM without first addressing Kenis' motions. *See Bd. of Gallery of History v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (stating that "[t]he absence of a ruling awarding the requested [relief] constitutes a denial of the claim"). On appeal, Kenis argues the Veterans Affairs ledger was "automatically admissible" because it was a government document and, thus, it should have been admitted and considered by the court. But Kenis' argument in this regard ignores the fact that his request to admit these materials was untimely, as it came after both the briefing of and the hearing on MGM's summary judgment motion had been completed. *See* EDCR 2.20 (c), (e), and (i) (addressing the time periods governing the filing of motions, oppositions, and supplemental briefing).

Moreover, even if Kenis had attached the Veterans Affairs ledger to his opposition to MGM's summary judgment motion, or been allowed to submit that document after the hearing, despite Kenis' argument to the contrary, the ledger would not have supported his damages claim. Notably, this document contains no information, beyond the date, regarding when or where the injury Kenis was apparently being treated for occurred, and it does not identify the injury being treated,<sup>2</sup> or what treatment Kenis

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<sup>2</sup>In his informal brief, Kenis summarily asserts that Veterans Affairs "should be fully reimbursed . . . including for IIED." But as noted above, on appeal, Kenis failed to cogently challenge the district court's grant of partial



was provided with. Under these circumstances, the Veterans Affairs ledger Kenis relies on is insufficient to demonstrate damages for Kenis' alleged injury. See *Cathcart*, 106 Nev. at 480, 795 P.2d at 987.

Thus, for the reasons set forth above, based on our de novo review of the district court's decision to grant MGM summary judgment on Kenis' negligence claim, we cannot conclude that the district court erred in this determination.<sup>3</sup> See *Wood*, 121 Nev. at 729, 121 P.3d at 1029; see also *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that the appellate courts will affirm a district court decision if it reached the correct result, albeit for different reasons).

Finally, Kenis summarily contends that the district court wrongly failed to give him additional time to conduct discovery and that certain of his evidence should have been admitted prior to the summary judgment decision. But Kenis fails to identify what information he sought through additional discovery. And aside from possibly the Veterans Affairs ledger, which as noted above was not sufficient to support his damages claims, Kenis likewise fails to explain what evidence was not admitted prior to the grant of summary judgment on his claims. As a result, he has failed to offer any cogent argument on these points, and thus, we do not consider them. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

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judgment on the pleadings, which resolved his intentional infliction of emotional distress claim in MGM's favor. Moreover, Kenis' IIED claim was premised on MGM's failure to respond to his various communications regarding what he believes happened at the October 1 shooting, rather than on any injury he purportedly suffered during the shooting itself.

<sup>3</sup>In light of our disposition, we need not address the district court's conclusion that, because Kenis was not on a hotel premises as defined under NRS 651.005, innkeeper liability does not apply.


Similarly, while Kenis contends that the district court “could” have granted him leave to amend his complaint after it granted MGM’s motion for partial judgment on the pleadings, he fails to explain what such an amendment would have accomplished or show how the district court supposedly abused its discretion in denying such relief in light of his failure to submit a proposed amended complaint with his motion to amend. See EDCR 2.30(a) (“A copy of a proposed amended pleading must be attached to any motion to amend the pleading.”); *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 801 (1969) (“Where there is no showing of the nature or substance of the proposed amendment or what the appellant expects to accomplish by it, a reviewing court cannot say a trial court abused its discretion in denying leave to amend.”).

Thus, because Kenis has failed to demonstrate any basis for reversal, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>4</sup>Insofar as Kenis raises 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 our disposition of this appeal.



cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 7  
Roger Allen Kenis  
Pisanelli Bice, PLLC  
Eighth District Court Clerk