IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE VALDEZ, INDIVIDUALLY, AND ON BEHALF OF G.V., A MINOR,
Appellant,
vs.
RIVERSIDE RESORT AND CASINO, INC.,
Respondent.

No. 89008-COA

FILED
JUN 25 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jesse Valdez and his minor child G.V. appeal from a district court order granting a motion for summary judgment in a tort action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Jesse Valdez[1] alleges that that his minor child, G.V., ingested a controlled substance while staying in a hotel room at respondent Riverside Resort and Casino, Inc. (Riverside). G.V., who was eight-months old at the time of the incident, purportedly experienced a "sudden, unanticipated, and adverse reaction" to the then-unknown substance while climbing on a nightstand and crawling on the carpet in the room. Valdez immediately took G.V. to the hospital where he tested positive for amphetamine exposure.

Valdez subsequently contacted LVMPD to report G.V.'s amphetamine exposure. LVMPD was dispatched to investigate Valdez's guest room and was escorted to the room by Riverside security. The

[1]Although both Valdez and G.V. are appellants in this case, because Valdez appeals both on his and G.V.'s behalf, we refer to appellants collectively as "Valdez."

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LVMPD officer, Christopher Swallia, explained to security that Valdez reported that he had observed a layer of white, powdery substance in the room's nightstand and that he wiped it up with a towel and threw the towel in the garbage can. Swallia collected the towel and put it in a clear plastic bag. He also took pictures of the nightstand drawer.[2]

The towel collected by Swallia was later tested by LVMPD forensic scientist Jason Altnether. Although Altnether's tests revealed the presence of starch, no controlled substances, dangerous drugs, or chemicals were found on the towel samples that were tested.

In December 2022, Valdez filed a complaint alleging negligence and negligent hiring, training, or supervision against Riverside, on behalf of himself and G.V., as a result of G.V.'s alleged exposure to amphetamine. He alleged that Riverside negligently failed to manage, maintain, inspect, control, and supervise the premises, thereby allowing G.V. to be exposed to an alleged controlled substance in his hotel room.[3] Valdez also claimed negligent infliction of emotional distress (NIED) solely on his behalf.

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[2]Valdez's wife also took photographs of the inside of the nightstand upon returning from the hospital. These photographs are included in the record on appeal.

[3]Valdez identified the alleged controlled substance as methamphetamine in his complaint. However, as the case proceeded through litigation, Valdez characterized the injury as an exposure to amphetamine—the drug G.V. had actually tested positive for. Thus, we typically refer to amphetamine when discussing the facts of this case, although we occasionally refer to methamphetamine when discussing the parties' arguments or experts' reports and testimony, and in light of those arguments, reports, and testimony, we broadly consider whether the evidence established the presence of amphetamine, methamphetamine, or any other hazardous substance in the hotel room at Riverside. In doing so, we recognize that G.V. only tested positive for amphetamine exposure.

During discovery, Altnether was deposed, and he explained that he performed three different tests on five different cuttings of the towel, including an unidentified stain. He also stated that he tested some loose powder found at the bottom of the plastic bag the towel was in. Altnether testified that if amphetamine was present on the towel, then he likely would have seen it given the number of representative cuttings he made from the towel and the tests he ran on those cuttings. When pressed by Valdez's counsel as to whether the testing done on the specific cuttings conclusively ruled out the possibility of the presence of an amphetamine, Altnether responded that while it was *possible* that there was amphetamine on some part of the towel he did not test, he could confidentially say that he thoroughly tested the towel and found no evidence of amphetamine.

Riverside requested an additional toxicology report from expert Vanessa A. Fitsanakis, Ph.D. Dr. Fitsanakis found that the chemical testing conducted by Altnether on the towel to determine if amphetamine was present on the towel was the product of reliable and reproducible principles accepted by the scientific community. Dr. Fitsanakis's report concluded that Altnether's results supported that the unknown powder on the washcloth was only starch.

To refute Altnether's and Dr. Fitsanakis's opinions, Valdez identified pediatric neurologist Dr. Sonal Bhatia MBBS, MD, as an expert and produced a report. Dr. Bhatia's report stated that the time it takes for methamphetamine's[4] active substance to be reduced by half in the body is

[4]We note that Dr. Bhatia's report mistakenly refers to "methamphetamine" when G.V. only tested positive for an unnamed amphetamine. However, her report also refers to amphetamine ingestion, which is in line with G.V.'s diagnosis.

6-15 hours, which was commensurate with G.V.'s reported improvement at his pediatrician's office less than 24 hours after his alleged ingestion of the drug. Nevertheless, when Riverside deposed Dr. Bhatia and asked whether she was able to give an opinion to a reasonable degree of medical probability as to where G.V. consumed the amphetamine found in his system, she responded, "No." Riverside confirmed Dr. Bhatia's answer by asking, "At the time of trial, you will not be giving the opinion that G.V. consumed amphetamine at the Riverside, because you have no basis for giving that opinion, correct?" to which Dr. Bhatia responded, "Yes."

After depositions were taken from multiple witnesses,[5] discovery was set to close April 9, 2024. On March 5, 2024, Valdez noticed an NRCP 30(b)(6) deposition for April 8—one day before discovery closed. The notice identified twenty topics to be discussed at the deposition, most of which concerned Riverside's policies and procedures regarding security and room cleaning, as well as any communications that took place in connection with the subject incident. The notice was accompanied by an email stating that Valdez was open to moving the deposition date if necessary. Riverside notified Valdez that it would not be available at the noticed date and time but said that it would respond with potential dates for the deposition in the future.

A few days later, Riverside sent a letter responding to Valdez's notice of the NRCP 30(b)(6) deposition, objecting to 9 of the proposed 20 topics. Riverside proposed an EDCR 2.34 conference to resolve any dispute before the close of discovery so that the deposition could be taken. In response, Valdez refused to modify the topics and reminded Riverside that

[5]Valdez, Valdez's wife, two LVMPD officers, Altnether, Dr. Bhatia, and several Riverside employees were deposed during discovery.

it had not yet provided any alternative dates for the NRCP 30(b)(6) deposition. Although Riverside requested an EDCR 2.34 conference, Valdez did not respond, nor did Riverside provide any alternative dates for the deposition.

Valdez advised Riverside that if alternative dates for the NRCP 30(b)(6) deposition were not provided, the deposition would go forward on April 8 as scheduled. An EDCR 2.34 conference was ultimately held on April 5, but the parties could not reach an agreement as to the scope of the deposition or the date it was to occur.

On April 8, Riverside did not appear for the NRCP 30(b)(6) deposition. Of note, Riverside failed to file a motion for protective order in advance of its decision not to appear at the deposition. Valdez made a record of the nonappearance and indicated that any late filed motion for a protective order would be opposed.

On April 10, the day after discovery closed, Riverside filed a motion for a protective order and a motion for summary judgment. In its motion for summary judgment, Riverside argued that Valdez's claims failed as a matter of law because he could not establish a breach of the duty of care since he could not prove that amphetamine was present in the hotel room at Riverside even though he alleged that this was where G.V.'s exposure occurred. Given the foregoing, Riverside further argued that Valdez's claim for negligent hiring, training, and supervision necessarily failed because he could not establish a causal link between any breach of Riverside's duty to hire, train, or supervise staff, and G.V.'s injury of amphetamine exposure.

Valdez opposed Riverside's motion for summary judgment and argued that the district court should grant NRCP 56(d) relief as to his claim

for negligent hiring, training, and supervision because Riverside's NRCP 30(b)(6) deposition was still outstanding regarding topics related to this claim. Further, Valdez argued that there were genuine disputes of material fact concerning breach of duty as to his negligence and NIED claims because there was a question of whether G.V. was exposed to amphetamine in the hotel room at Riverside and whether G.V.'s reaction was foreseeable.

The same day that Valdez filed his opposition to Riverside's motion for summary judgment, the parties appeared before the discovery commissioner on Riverside's motion for a protective order. The discovery commissioner entered a report and recommendation a few weeks later vacating the non-appearance entered against Riverside, limiting two challenged NRCP 30(b)(6) deposition topics, excluding one challenged topic, but allowing the rest.[6] The district court affirmed and adopted the discovery commissioner's report and recommendations.

The district court heard Riverside's motion for summary judgment, and about one month later entered an order granting the motion. In its order, the court concluded that Valdez could not establish that Riverside breached its duty on any of his claims. The court specifically reasoned that Valdez could not establish that G.V. had consumed amphetamine on Riverside's premises as Valdez's only disclosed expert witness, Dr. Bhatia, testified that she could not opine that G.V. consumed any type of amphetamine at Riverside. Further, the court found that Valdez failed to "do more than simply show that there is some metaphysical doubt"

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[6]Although unclear from the record, it does not appear that an NRCP 30(b)(6) deposition occurred before the court eventually granted Riverside's motion for summary judgment, as Valdez opposed that motion, in part, by arguing for additional time pursuant to NRCP 56(d) to conduct the deposition.

as to whether amphetamine was on the towel taken from the subject guest room as all testing supported that there was no amphetamine present on the towel only starch. The court also denied Valdez's request for relief under NRCP 56(d) because it found that an NRCP 30(b)(6) deposition would not establish breach under the circumstances presented here. This appeal followed.

Valdez raises two issues on appeal. First, he argues that the district court erred in granting summary judgment for Riverside by determining that he failed to establish breach of duty as to his negligence and NIED claims. Second, he argues the district court abused its discretion when it rejected his request for NRCP 56(d) relief on his negligent hiring, training, and supervision claim[7] when the NRCP 30(b)(6) deposition that he sought had not yet been conducted and that testimony from this deposition would have supported this claim. We address each argument in turn.

The district court did not err in granting Riverside's motion for summary judgment

On appeal, Valdez argues that the district court erred in granting summary judgment for Riverside as to his claims because there is still a genuine dispute of material fact as to whether the white powder found in the nightstand at Riverside was amphetamine because Altnether conceded his testing did not preclude the existence of such substances. He also argues that the timeline between exposure to the white powder and G.V.'s symptoms establishes that G.V. was exposed to amphetamine at Riverside, and Riverside has not offered an alternative explanation for G.V.'s exposure.

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[7]Valdez does not assert that he was entitled to NRCP 56(d) relief with respect to his negligence and NIED claims.

In turn, Riverside argues that the district court properly dismissed Valdez's claims because Valdez could not prove negligence based on evidence of breach of duty—an essential element of all his claims. Riverside argues that the presence of powder in Valdez's guestroom is not evidence it breached its duty to Valdez and G.V. as guests of the hotel because laboratory tests confirm the powder was starch, and having starch in a hotel room is not a breach of any known duty. Further, Riverside asserts Valdez has not offered an expert to refute Altnether's findings that the powder was starch and that no substance identified as amphetamine was found in the hotel room.

We review a district court order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is only appropriate when the evidence, construed in a light most favorable to the non-moving party, demonstrates there is no genuine dispute of material fact. *Id.*; NRCP 56. If the defendant is the moving party, its burden of production is satisfied by providing "evidence that negates an essential element of the nonmoving party's claim, or [by] pointing out that there is an absence of evidence to support the nonmoving party's case." *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671, 262 P.3d 705, 714 (2011) (internal quotation marks omitted) (stating that if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment must satisfy the burden of production). It is then the nonmoving party's responsibility to present sufficient facts to establish the existence of a genuine dispute of material fact. *Wood*, 121 Nev. at 732, 121 P.3d at 1031. A genuine dispute of material fact exists when evidence is such that a reasonable jury could

return a verdict for the nonmoving party. *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 606, 427 P.3d 113, 117 (2018).

To prevail on a negligence claim, a plaintiff has the burden of proof to show that "(1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff's injuries; and (4) the plaintiff suffered damages." *Sadler v. Pacificare of Nev.*, 130 Nev. 990, 995, 340 P.3d 1264, 1267 (2014) (quoting *DeBoer v. Sr. Bridges of Sparks Fam. Hosp.*, 128 Nev. 406, 412, 282 P.3d 727, 732 (2012)). The owner or possessor of a hotel owes a visitor an ordinary duty of care to keep the premises reasonably safe. *Twardowski v. Westward Ho Motels, Inc.*, 86 Nev. 784, 786, 476 P.2d 946, 947 (1970). However, such an owner or possessor "is not an insurer of the safety of a person on the premises and in the absence of negligence, no liability lies." *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993).

Here, Riverside provided evidence that it did not breach its duty to Valdez as required to establish a negligence claim. *See Sadler*, 130 Nev. at 995, 340 P.3d at 1267. Riverside provided a deposition and expert report from Altnether, who indicated that the only identifiable substance on the towel Valdez used to wipe up the powder in the drawer was starch. It also provided a toxicology report prepared by Dr. Fitsanakis confirming Altnether's findings. Since Riverside's evidence established that the white powder found in the nightstand was not amphetamine, methamphetamine, or any other hazardous substance, it demonstrated that there was a lack of evidence to support that G.V.'s exposure to amphetamine occurred in Valdez's hotel room at Riverside. Further, this is the only place where Valdez argued the exposure occurred on Riverside's premises, and therefore Riverside did not breach its duty of reasonable care to keep the premises,

where the alleged exposure occurred, reasonably safe. *See Twardowski*, 86 Nev. at 786, 476 P.2d at 947.

Further, Valdez has failed to demonstrate that there are genuine disputes of material fact to support a breach of duty to preclude a grant of summary judgment. *Wood*, 121 Nev. at 732, 121 P.3d at 1031. To establish a genuine dispute of material fact as to breach of duty, Valdez must show that G.V. was exposed to amphetamine, methamphetamine, or another hazardous substance in the hotel room at Riverside due to Riverside's negligence. *See Sprague*, 109 Nev. at 250, 849 P.2d at 322. Although Valdez argues Riverside had actual or constructive notice that there was powder in the nightstand drawer, he has not provided evidence to suggest that the powder was either an amphetamine, methamphetamine, or any other hazardous substance and therefore was the source of the exposure. *See Bank of Am.*, 134 Nev. at 606, 427 P.3d at 117. And although Valdez asserts that it is possible that there are substances other than starch on sections of the towel that Altnether did not test, he did not disclose an expert witness to refute Altnether's laboratory findings that the powder Valdez located in the nightstand, which was wiped up with the towel and tested, was not an amphetamine, methamphetamine, or any other hazardous substance. Further, Valdez failed to demonstrate that the testing was done incorrectly. *See* NRS 50.275 (requiring an expert witness where scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence).

Valdez's only expert witness, Dr. Bhatia, admitted in her deposition that she could not confirm that G.V. was exposed at Riverside or that the powdery substance found in the hotel room and on the towel was the amphetamine for which G.V. tested positive. Indeed, the laboratory

testing, which Valdez fails to successfully challenge, supported that the powdery substance found in the nightstand was only starch since the towel used to wipe up the powdery substance did not show the presence of any type of amphetamine. Although in his deposition Altnether testified it is *possible* that amphetamine or methamphetamine could have been present on a part of the towel he did not test,[8] he was confident in his results because he tested numerous samples and there was no factual support that the towel contained anything other than starch.

As to Valdez's argument that the timeline of G.V.'s exposure, exhibition of symptoms, and positive urinalysis for amphetamine establishes a question of material fact as to whether G.V. was exposed to the amphetamine at Riverside, Dr. Bhatia's expert report does not support this proposition. Dr. Bhatia's report noted that the time it takes for the active substances, and methamphetamine in particular, to be reduced by half is considered to be 6-15 hours. She also noted that this time frame appeared commensurate with G.V.'s improvement as noted at his pediatrician's office in less than 24 hours after his ingestion. However, the report did not provide a timeline between amphetamine exposure and the onset of symptoms, which would be necessary to determine whether G.V.'s exposure occurred in the hotel room at Riverside to support that Riverside

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[8]To the extent that Valdez relies on Altnether's testimony concerning the possible presence of amphetamine or methamphetamine on untested portions of the towel to argue that there was a genuine dispute of material fact concerning whether Riverside breached its duty, relief is unwarranted because Valdez cannot rely "on the gossamer threads of whimsy, speculation and conjecture" to avoid summary judgment, but instead, he must set forth specific facts establishing the existence of a genuine dispute of material fact. *Wood*, 121 Nev. at 731, 121 P.3d at 1031-32 (internal quotation marks omitted).

failed to maintain its premises in a safe condition thereby breaching its duty to Valdez. Instead, Dr. Bhatia specifically admitted that she could not give the opinion to a reasonable degree of medical probability that the amphetamine exposure occurred on Riverside's premises based on the onset of G.V.'s symptoms.

Dr. Bhatia could not give the opinion to a reasonable degree of medical probability that G.V. ingested amphetamine, methamphetamine, or another controlled substance in the Riverside hotel room. Therefore, based on the testimony of his own expert, Valdez could not establish that Riverside breached any duty to keep its premises safe. *See Morsicato v. Sav-On Drug Stores, Inc.* 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005) (providing that medical experts must comply with the reasonable degree of medical probability standard when regarding the standard of care in medical malpractice cases); *Sadler*, 130 Nev. at 995, 340 P.3d at 1267. Therefore, because Valdez fails to show there is a genuine dispute of material fact as to whether Riverside breached its duty, the district court did not err in granting Riverside's motion for summary judgment as to Valdez's negligence claims.

The district court did not abuse its discretion in denying Valdez NRCP 56(d) relief

Valdez argues that the district court erred by granting summary judgment as to his negligent hiring, training, and supervision claim because it improperly denied him NRCP 56(d) relief before ruling on the motion. He argues Riverside moved for summary judgment even though discovery in the form of the NRCP 30(b)(6) depositions had yet to be completed, thereby "knowingly and willingly" withholding examination by which Valdez could establish key facts regarding negligent hiring, training, and supervision. Riverside responds that the deposition would not have

changed the outcome of the district court's decision because Valdez could not establish that G.V. ingested amphetamine, methamphetamine, or another hazardous substance in the hotel room at Riverside.

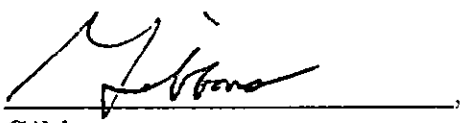
This court reviews a court's denial of a party's request for relief pursuant to NRCP 56(d) for an abuse of discretion. *See* NRCP 56(d) (providing that the court *may* deny the motion for summary judgment in circumstances where the nonmoving party cannot present essential facts). NRCP 56(d) authorizes relief where a nonmoving party shows by affidavit or declaration that it cannot present facts essential to justify its opposition. Where additional discovery is being requested, "a party must show that the requested discovery, if obtained, would alter the court's determination." *Sciarratta v. Foremost Ins. Co.*, 137 Nev. 327, 333-34, 491 P.3d 7, 12 (2021) (internal quotation marks omitted).

Valdez argues that the NRCP 30(b)(6) deposition was necessary so that he could ask questions regarding Riverside's policies and procedures. However, since Valdez cannot establish that G.V. ingested amphetamine, methamphetamine, or any other hazardous substance in the hotel room at Riverside, he cannot demonstrate that Riverside breached any duty of care requiring it or its employees to ensure that such substances were not present in the hotel room and, therefore, he cannot show that Riverside acted negligently under any of his legal theories. *See Olivero v. Lowe*, 116 Nev. 395, 399, 995 P.2d 1023, 1026 (2000) (defining NIED as a cause of action where a bystander suffers serious emotional distress which results in physical symptoms caused by apprehending the serious injury of a loved one due to *the negligence of a defendant*); *Freeman Expositions, LLC, v. Eighth Jud. Dist. Ct.*, 138 Nev. 775, 784, 520 P.3d 803, 811 (2022) (explaining that, to prevail on a claim for negligent hiring, training, or

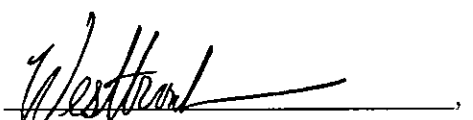
supervision, the plaintiff must establish that the defendant breached its duty of care "by hiring, training, retaining, and/or supervising an employee even though defendant knew, or should have known, of the employee's dangerous propensities"). Thus, even if the NRCP 30(b)(6) deposition had been permitted to proceed, he would not have been able to establish breach of duty for his negligence claims. *Id.* And as a result, Valdez cannot show that the completion of the NRCP 30(b)(6) deposition would have altered the court's determination. *Sciarratta*, 137 Nev. at 333-34, 491 P.3d at 12. Thus, we conclude the court did not abuse its discretion in denying Valdez's request for NRCP 56(d) relief and granting Riverside's motion for summary judgment. Accordingly, we,

ORDER the judgment of the district court AFFIRMED.[9]

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Angulo Law Group, LLC
Brandon Smerber Law Firm
Eighth District Court Clerk

[9]Insofar as Valdez raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.