

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEE E. SZYMBORSKI,
Appellant,
vs.
SPRING MOUNTAIN TREATMENT
CENTER,
Respondent.

No. 81109-COA

FILED

MAY 14 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. J. J. J.
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lee E. Szymborski appeals from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Trevor L. Atkin, Judge.

Szymborski initiated the underlying action against respondent Spring Mountain Treatment Center (SMTC), asserting claims for negligence, professional negligence, social-worker malpractice, gross negligence, negligence per se, and negligent hiring, supervision, and training. At the heart of Szymborski's claims were allegations that SMTC—without Szymborski's knowledge and against his wishes—discharged Szymborski's adult son, Sean, and provided him with cab fare to reach Szymborski's home, where he then caused \$20,000 in property damage. SMTC moved to dismiss the action, which the district court granted, concluding that Szymborski's claims sounded in medical malpractice and that he failed to attach an affidavit from a medical expert to his complaint as required under NRS 41A.071. Szymborski appealed, and the supreme

court affirmed in part, reversed in part, and remanded, agreeing with the district court as to the professional-negligence claim, but disagreeing as to the rest. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 639, 403 P.3d 1280, 1282 (2017).

Following remand, Szymborski's counsel withdrew, and SMTC served Szymborski with multiple requests for admissions, including admissions that Szymborski knew Sean was going to be discharged and that Szymborski told his roommate about the discharge and to let Sean in upon his arrival at the property. Szymborski failed to respond to these requests, and SMTC later filed two motions for summary judgment: one based on Szymborski's failure to respond to the requests for admissions and to establish that SMTC owed Szymborski a duty of care, and the other based on Szymborski's failure to establish that SMTC proximately caused Szymborski to incur damages. Szymborski failed to file an opposition to SMTC's motion for summary judgment based on causation, and he filed an untimely opposition to the other motion, along with a countermotion for summary judgment.

The district court ultimately granted summary judgment in favor of SMTC and denied Szymborski's motion, concluding that Szymborski failed to demonstrate that SMTC owed him a duty of care, that the unanswered requests for admissions were deemed admitted, that Szymborski failed to provide any admissible evidence to create a genuine dispute of material fact concerning any of the elements of his claims, that he failed to oppose the motion for summary judgment as to causation and

the motion was therefore granted as unopposed, and that, as a result, SMTC was entitled to judgment as a matter of law. This appeal followed.

On appeal, Szyborski argues only that the district court judges who presided over his case should have recused themselves and/or been subject to discipline, that they failed to adequately accommodate his cognitive disability, that SMTC violated various regulations regarding discharge planning, that he did not consent to Sean being released to his home, and that SMTC owed him a duty of care. But Szyborski fails to set forth any argument concerning the district court's decision to deem the unanswered requests for admissions as admitted, *see* NRCP 36(a)(3) (providing that "[a] matter is admitted unless" the party answers or objects to the request for admission within 30 days of service), or its decision to grant SMTC's motion for summary judgment concerning causation as unopposed, *see* EDCR 2.20(e) (providing that the "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion . . . is meritorious and a consent to granting the same"); *King v. Carlidge*, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (holding that, under a rule materially identical to EDCR 2.20(e), a district court has discretion to grant a motion on grounds that it was unopposed).

Because all of Szyborski's claims sound in negligence, and because causation is an essential element of a negligence claim, *see Klasch v. Walgreen Co.*, 127 Nev. 832, 837, 264 P.3d 1155, 1158 (2011), the district court's unchallenged ruling on the unopposed motion for summary judgment as to causation is sufficient to sustain the judgment in favor of SMTC. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252

P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived); *see also Hillis v. Heineman*, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming the district court's ruling where the appellants failed to challenge an alternative ground the district court provided for it). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 8
Lee E. Szymborski
Hall Prangle & Schoonveld, LLC/Las Vegas
Eighth District Court Clerk