



IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNY MOORE,
Appellant,
vs.
THE PRIMADONNA COMPANY, LLC,
D/B/A WHISKEY PETE'S HOTEL &
CASINO, A NEVADA LIMITED
LIABILITY COMPANY; AND FULL
SERVICE SYSTEMS CORPORATION, A
FOREIGN CORPORATION,
Respondents.

No. 89261

Appeal from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Affirmed in part, vacated in part, and remanded.

Claggett & Sykes Law Firm and Micah S. Echols, Charles L. Finlayson, David P. Snyder, and Charles E. Cahillane, Las Vegas; Burk Injury Lawyers and Christopher D. Burk and A. J. Sharp, Las Vegas,
for Appellant.

Brandon Smerber Law Firm and Lew Brandon, Jr., and Ryan Venci, Las Vegas,
for Respondent The Primadonna Company, LLC.

Homan, Stone & Rossi, APC, and Bernadette Rigo, Las Vegas,
for Respondent Full Service Systems Corporation.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, CADISH, J.:

Appellant Ronny Moore slipped in spilled liquid and fell at a truck stop's self-service fueling station. Moore sued the truck stop owner, respondent The Primadonna Company, LLC, for negligence. As relevant here, Moore proceeded under a mode-of-operation theory that permits a plaintiff to satisfy the notice requirement for premises liability based on risks that are reasonably foreseeable from the defendant's mode of conducting its business. The district court granted summary judgment for Primadonna because Moore did not point to evidence that employees traditionally dispense fuel or that self-service fueling was a newer merchandising technique. But those historical facts do not, standing alone, resolve whether Primadonna could have reasonably foreseen fuel spills as a risk of its operation or whether the evidence otherwise supports that Primadonna had notice of the spill at issue. We therefore decline to adopt the mode-of-operation theory of premises liability and instead refocus on the foreseeability of the risk and the reasonableness of the operator's response to such risks. Because the district court did not reach those questions, we vacate and remand.

FACTS AND PROCEDURAL HISTORY

Primadonna owns and operates a truck stop self-service fueling station. Respondent Full Service Systems Corporation (FSS) provides janitorial services for Primadonna. In 2019, Moore was working as a truck driver and sustained injuries after slipping on a substance believed to be gasoline at Primadonna's fueling station when he stopped for fuel there. After his fall, Moore reported the spill to a Primadonna employee, and another employee put an absorbent on the spill. Evidence was presented that Primadonna kept a log documenting gasoline spills of one gallon or more.

Moore filed a complaint for negligence against Primadonna in the district court. Primadonna filed an answer to Moore's complaint and a third-party complaint against FSS. Moore subsequently amended his complaint to add claims against FSS as well. At the close of discovery, Primadonna and FSS moved for summary judgment on Moore's claims, arguing that Moore could not establish that they had either actual or constructive notice of the hazardous condition alleged in the complaint.

The district court granted summary judgment in favor of Primadonna and FSS because Moore failed to produce evidence of an employee causing the spill or that the spill was present long enough to show actual or constructive notice. The district court also held that Moore failed to produce any evidence that self-service fueling is a newer merchandising technique or that, in Nevada, truck stop employees traditionally dispensed fuel, and thus that he failed to support a mode-of-operation theory of liability.

Moore appealed, and the court of appeals reversed and remanded for further proceedings. *Moore v. Primadonna Co., LLC*, 142 Nev., Adv. Op. 6, 584 P.3d 835, 841 (Ct. App. 2026) (Opinion Affirming in Part, Reversing in Part, and Remanding). This court granted Primadonna's petition for review under NRAP 40B.

DISCUSSION

Moore argues that the district court erred by requiring him to produce evidence that employees traditionally dispensed fuel or that self-service fueling is a newer merchandising technique to establish constructive notice under a mode-of-operation theory. Moore asserts that whether employees traditionally dispensed fuel for customers is a fact question for the jury. Moore claims that to survive summary judgment, he did not need to produce evidence of how commercial gas stations operate because a jury can rely on common knowledge. Regardless, Moore asserts that since caselaw

recognizes a shift to self-service grocery stores as an example of a new merchandising technique, courts should also recognize the shift to self-service fueling as a new merchandising technique.

This court reviews a grant of summary judgment de novo. *Abbot v. City of Henderson*, 140 Nev. 21, 23, 542 P.3d 10, 12 (2024) (citing *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). “Summary judgment is only appropriate where, construing all evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law.” *Id.* (citing *Wood*, 121 Nev. at 729, 121 P.3d at 1029, and NRCP 56(a)).

A negligence claim in Nevada requires proof of four elements: “(1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages.” *PHWL, LLC v. House of CB USA, LLC*, 140 Nev. 481, 483, 554 P.3d 715, 719 (2024) (quoting *Turner v. Mandalay Sports Ent., LLC*, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008)). The legal causation and damages elements are not at issue here. A duty of care exists when the relationship between the parties is one that the community recognizes as imposing a legal obligation on one for the benefit of the other. *Id.* (citing *Lee v. GNLV Corp.*, 117 Nev. 291, 295, 22 P.3d 209, 212 (2001)).

Nevada has adopted the Restatement (Third) of Torts’ principle that land possessors owe a general duty of reasonable care to all entrants. *Id.* (citing *Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 781, 291 P.3d 150, 156 (2012)); Restatement (Third) of Torts: Physical & Emotional Harm § 51 cmt. a (Am. L. Inst. 2012). Thus, a business owner owes its customers a duty to maintain its premises in a reasonably safe condition. *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 250, 849 P.2d 320, 322 (1993). That duty requires the

exercise of “reasonable care under the circumstances.” *PHWL*V, 140 Nev. at 484, 554 P.3d at 719 (quoting *Lee*, 117 Nev. at 296, 22 P.3d at 212).

Whether a business has exercised reasonable care depends on “foreseeability and gravity of harm, and the feasibility and availability of alternative conduct that would have prevented the harm.” *Id.* (quoting *Foster*, 128 Nev. at 781, 291 P.3d at 156). In the premises-liability context, this generally requires a plaintiff to show that the business failed to exercise reasonable care in responding to a hazardous condition. *See, e.g., Sprague*, 109 Nev. at 251, 849 P.2d at 323 (concluding a material issue of fact remained whether respondent “failed to exercise reasonable care in not providing skid mats to counter the continuous spillage of produce” after receiving constructive notice of the hazardous condition). When a business or its employee causes a foreign substance to be on the floor and a patron slips on the substance and falls, the business owner may be liable for the patron’s injuries because the substance on the floor is not usually consistent with reasonably safe conditions. *Id.* at 250, 849 P.2d at 322. When a third party causes the substance to be on the floor, however, the plaintiff ordinarily must establish that the business had actual or constructive notice of the condition and failed to remedy it. *Id.* at 250, 849 P.2d at 322-23.

As an alternative to the traditional framework requiring actual or constructive notice, this court has recognized—without explicitly adopting—the mode-of-operation approach. *See FGA, Inc. v. Giglio*, 128 Nev. 271, 280-82, 278 P.3d 490, 496-97 (2012) (“In *Sprague v. Lucky Stores, Inc.*, this court implicitly adopted the mode-of-operation approach in reversing an order

granting summary judgment in favor of Lucky. 109 Nev. at 251, 849 P.2d at 323.”).¹

Under the mode of operation approach, “the plaintiff’s burden to prove notice is not eliminated. Instead, the plaintiff satisfies the notice requirement if he establishes that an injury was attributable to a reasonably foreseeable dangerous condition on the owner’s premises that is related to the owner’s self-service mode of operation.”

Id. at 281, 278 P.3d at 496 (quoting *Sheehan v. Roche Bros. Supermkts., Inc.*, 863 N.E.2d 1276, 1283 (Mass. 2007)). The mode-of-operation approach, when it applies, thus requires consideration of whether a dangerous condition was reasonably foreseeable. *Id.* But foreseeability is already part of Nevada’s established negligence framework. Under the Restatement (Third) of Torts, “[t]he duty of reasonable care includes reasonable care to discover dangerous conditions on the land and to eliminate or ameliorate them.” Restatement (Third) of Torts § 51 cmt. i (Am. L. Inst. 2012). “The primary factors to consider in determining whether reasonable care has been exercised are the foreseeable likelihood of harm, the foreseeable severity of any potential harm, and the burden required of the land possessor to eliminate or reduce the risk.” *Id.* Accordingly, whether a dangerous condition is reasonably foreseeable is an inquiry already required under Nevada negligence law, regardless of whether the condition arose from a particular mode of operation. *PHWL*, 140 Nev. at 484, 554 P.3d at 719.

Therefore, we now explicitly decline to adopt the mode-of-operation approach to premises liability and instead clarify that, regardless of the

¹The court noted in *Giglio* that Nevada has never explicitly adopted the mode-of-operation approach. 128 Nev. at 281 n.5, 278 P.3d at 497 n.5.

particular business model used, constructive notice of a hazard may be established by evidence that the dangerous condition is reasonably foreseeable. Such foreseeability may be shown by evidence demonstrating constructive notice of the particular hazard that caused the injury in question (usually due to the length of time the hazard was present) or evidence supporting more general foreseeability of this particular type of risk. We also emphasize that, even if the hazard was reasonably foreseeable and constructive notice was established, the injured party also must show that the business did not act reasonably in addressing that foreseeable risk.

Here, the district court focused on whether Moore presented evidence sufficient to support a mode-of-operation theory. The relevant inquiry, however, was whether the alleged fuel spill constituted a reasonably foreseeable dangerous condition that could provide Primadonna or FSS with constructive notice of such a hazard and, if so, whether they reasonably addressed that risk. The district court therefore erred by granting summary judgment for Primadonna and FSS based on its conclusions about the mode-of-operation theory of liability.

CONCLUSION

We conclude that after slipping on spilled liquid at a self-service fueling station and getting injured, Moore was not required to show that employees traditionally dispensed fuel or that self-service fueling is a newer merchandising technique to establish constructive notice of the spill. Nevada negligence law governing premises liability generally requires consideration of the foreseeability of a risk in determining the scope of the duty of care. Thus, to establish constructive notice of the hazard, Moore needed only to present evidence from which a reasonable trier of fact could find that the fuel spill was a reasonably foreseeable risk. Because the district court did not consider this issue before granting summary judgment, we vacate and remand for

proceedings consistent with this opinion.² However, because Moore did not challenge the grant of summary judgment on his negligent hiring, training, supervision, and retention claim, we affirm the district court's decision as to that claim.



Cadish, J.

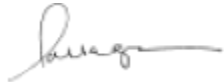
We concur:



Herndon, C.J.



Pickering, J.



Parraguirre, J.



Bell, J.



Stiglich, J.



Lee, J.

²In light of this opinion, the court of appeals decision is withdrawn.