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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2091**

Emad Abed,
Appellant,

vs.

Metropolitan Airports Commission, et al.,
Respondents.

**Filed August 6, 2012
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CV-10-13774

Kirk M. Anderson, Anderson & McCormick, P.A., Minneapolis, Minnesota (for
appellant)

Mark A. Solheim, Paula Duggan Vraa, Anthony J. Novak, Larson, King, L.L.P., St. Paul,
Minnesota (for respondents)

Considered and decided by Cleary, Presiding Judge; Stauber, Judge; and Collins,
Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appealing the district court's grant of summary judgment to respondents Metropolitan Airports Commission (MAC) and Schindler Elevator Company (Schindler) dismissing his personal-injury action, Emad Abed contends that the district court (1) abused its discretion by ruling on the summary-judgment motion after reopening discovery; (2) should have considered his supplemental filings submitted while the summary-judgment motion was under advisement; and (3) erred in granting summary judgment because (a) MAC and Schindler were negligent per se, or (b) MAC was a common carrier who owed Abed a heightened duty of care. We affirm.

FACTS

Abed brought this action alleging negligence per se, negligence, and strict liability, claiming that on August 18, 2007, as he was riding an escalator at the Minneapolis-Saint Paul International Airport, the mechanism caught hold of his pant leg, pulled him down, and tore off the pant leg. Abed sought damages for his resulting past and future pain and discomfort.

Pursuant to the stipulation of the parties, the district court ordered completion of discovery by May 24, 2011. A week before the discovery deadline, MAC and Schindler moved for summary judgment. In his memorandum opposing summary judgment, Abed asserted that (1) MAC and Schindler had a duty to install "brush guards" in the escalator, and (2) MAC was a common carrier who owed him a heightened duty of care. Abed failed to provide authority supporting either assertion.

Following a hearing on June 15, 2011, and the submission of proposed orders on June 24, the district court closed the record and took the summary-judgment motion under advisement. At the hearing, Abed requested leave to conduct further discovery, which the district court limited to “for purposes of trial.”

On August 11, Abed attempted to supplement the summary-judgment record with two affidavits and another memorandum. The district court declined to consider these submissions and ordered summary judgment in favor of MAC and Schindler.

The district court ruled that Abed had not demonstrated that MAC and Schindler had a duty to install brush guards. The district court did not address Abed’s assertion that MAC owed him a heightened duty of care because it was a common carrier. This appeal followed.

D E C I S I O N

I.

Abed first argues that the district court abused its discretion when it denied him the opportunity to supplement the record and granted summary judgment, even though the district court had reopened discovery. We disagree.

The district court’s decision to enforce or relax a procedural rule is reviewed under the abuse-of-discretion standard. *Lee v. Lee*, 749 N.W.2d 51, 61-62 (Minn. App. 2008), *aff’d in part, rev’d in part on other grounds*, 775 N.W.2d 631 (Minn. 2009). A party in a civil proceeding may bring a motion for summary judgment any time after 20 days following the service of the complaint. Minn. R. Civ. P. 56.01. However, the party opposing the motion may move for a continuance “to permit affidavits to be obtained or

depositions to be taken or discovery to be had.” Minn. R. Civ. P. 56.06. “Such continuance motions should be liberally granted, especially where one party has had insufficient time to complete discovery.” *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass’n*, 778 N.W.2d 393, 400 (Minn. App. 2010). However, the district court may take the diligence of the party seeking the continuance into account when determining whether to grant the continuance. *Id.*

Here, MAC and Schindler moved for summary judgment almost one year after Abed filed his complaint. The district court found that the discovery and procedural delays were due to Abed’s lack of diligence. The discovery deadline set by the district court had already been extended once and had expired before the summary-judgment hearing. Even construing Abed’s request for leave to conduct further discovery as a motion for a continuance before ruling on the summary-judgment motion, on this record the district court acted well within its discretion when it impliedly denied such a continuance by expressly closing the summary-judgment record and limiting further discovery to “for purposes of trial.”

Abed appears to argue that the district court should have considered the filings that he submitted on August 11, 2011, despite the fact that the record was closed as of June 24, when the motion for summary judgment was taken under advisement. We disagree. It is within the district court’s discretion to reasonably refuse supplemental filings after it closes the record. *Dalco Corp. v. Dixon*, 338 N.W.2d 437, 440 (Minn. 1983). It was not an abuse of the district court’s discretion to do so here.

II.

On appeal from summary judgment, this court reviews the record to determine (1) whether there is a genuine issue of material fact, and (2) whether the district court erred in its application of the law. *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). This review is conducted de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010).

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. The evidence is viewed in the light most favorable to the nonmoving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

A. Negligence per se

The district court granted summary judgment based on its determination that no evidence had been presented that would demonstrate that MAC and Schindler were legally required to install brush guards in the escalator. This issue is only relevant under a theory of negligence per se.

Negligence per se is a form of ordinary negligence that results from violation of a statute. A per se negligence rule substitutes a statutory standard of care for the ordinary prudent person standard of care, such that a violation of a statute * * * is conclusive evidence of duty and breach. For a statutory violation to satisfy the duty and breach elements, the person harmed by the violation must be among those the legislature intended to protect, and the harm must be of the type the legislature intended to prevent by enacting the

statute. Summary judgment is proper if there is a complete lack of proof on any of the essential elements of a negligence per se claim.

Anderson v. State, 693 N.W.2d 181, 189-90 (Minn. 2005) (quotations omitted).

Prior to the district court taking the summary-judgment motion under advisement, Abed had not identified a basis in any statute, safety code, or rule for his claim that MAC and Schindler were required to install brush guards on the escalator as of August 18, 2007, the date of the incident. Therefore, there was a complete lack of proof on the essential elements of the negligence per se claim, and the district court properly granted summary judgment on that claim.

B. Negligence

In order to establish a claim for negligence, one must prove “(1) the existence of a duty of care; (2) a breach of that duty; (3) an injury was sustained; and (4) breach of the duty was the proximate cause of the injury.” *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). If there is a complete lack of proof as to any of these elements, then a defendant is entitled to summary judgment. *Id.*

The district court granted summary judgment because Abed had failed to demonstrate that MAC and Schindler owed him a duty of care.

The existence of a legal duty of care is a question of law subject to de novo review. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). Generally, a person has no duty of care with respect to other persons, and the existence of a duty depends on the relationship of the parties and the foreseeability of the risk. *Donaldson v. Young Women’s Christian Ass’n of Duluth*, 539 N.W.2d 789, 792 (Minn. 1995). However,

special relationships giving rise to a duty of care have been found in cases involving “common carriers, innkeepers, possessors of land who hold it open to the public, and persons who have custody of another person under circumstances in which that other person is deprived of normal opportunities of self-protection.” *Id.*

Abed asserts that MAC owed him a duty of care because it was a common carrier with respect to the users of the escalator. Abed initially made this assertion in his timely memorandum of law opposing summary judgment. However, Abed failed to identify any authority to support this bald assertion; thus, the district court did not address it.

“The district court’s failure to address an issue raised only in a conclusory fashion and without supporting affidavits, or testimony, or argument is not error.” *Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. App. 2007). Such improperly raised issues will not be considered on appeal. *Id.* (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). Therefore, Abed’s contention that MAC was a common carrier is not before us.

As Abed failed to properly raise the issue before the district court, or preserve it for appeal, there has been a complete lack of proof as to an essential element of Abed’s negligence claim, and the district court properly granted summary judgment on that claim.

C. Strict liability

Abed pleaded that MAC and Schindler are liable under a theory of strict liability. The district court dismissed this claim as part of its summary-judgment ruling. On appeal, Abed has not made arguments addressing this claim. It is therefore waived.

See Melina v. Chaplin, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not briefed on appeal are waived).

Affirmed.