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### Summary of Estate of Smith v. Mahoney's Silver Nugget, 127 Nev. Adv. Op. No. 76

Colin Seale  
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## TORTS – INNKEEPER LIABILITY

### **Summary**

The Court considered a plaintiff's appeal of a district court's granting of summary judgment for in a wrongful death action.

### **Disposition/Outcome**

The Supreme Court of Nevada affirmed the District Court's summary judgment in favor of defendant Mahoney's Silver Nugget, Inc. ("Silver Nugget"). The Court held that the District Court properly applied NRS 651.015(3) in determining that there was no innkeeper liability because fatal shooting of Allen Tyrone Smith, Jr. ("Smith") was not foreseeable as a matter of law.

### **Factual and Procedural History**

Smith's estate filed claims against Mahoney's Silver Nugget asserting negligence, loss of consortium, and wrongful death. Daniel Ott ("Ott"), a patron of the Silver Nugget casino, shot and killed Smith during an altercation. Immediately before this incident, casino security asked Ott and his friends, Paris Lee ("Lee") and Lakiva Campbell, to leave five minutes after they joined a rowdy group in a lounge. Smith and his friends sat at a nearby bar, and as the boisterous group exited, one of Smith's friends started to argue with Lee. About ten seconds later, Smith left his barstool and punched Lee in the face. In response, Ott fatally shot Smith with a concealed weapon. The Silver Nugget filed a motion for summary judgment and the district court granted it. Smith's estate appealed.

### **Discussion**

Justice Parraguirre wrote for the unanimous three-justice panel. The Court first noted that NRS 651.015 proscribes an innkeeper's duty of care, but that the foreseeability standard described in the statute was ambiguous because it could be understood in more than one sense by reasonably informed persons.<sup>2</sup> Specifically, the statute's provision gives rise to an innkeeper's duty as a matter of law when the owner fails to exercise due care for the victim's safety on the premises or if the innkeeper has knowledge of prior incidents of similar wrongful acts occurring on the premises. The Court found that the statute's use of "due care" was counterintuitive because "due care" usually describes breach, an element of negligence usually decided by a jury.

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<sup>1</sup> By Colin Seale

<sup>2</sup> NEV. REV. STAT. 651.101 (2007).

If “due care” was an issue of fact instead of an issue of law, the District Court’s grant of summary judgment for the Silver Nugget would have been improper.<sup>3</sup>

After determining that the statute was ambiguous, the Court reviewed the statute’s legislative history to allow it to determine legislative intent. Relying on two legislative hearings, the Court determined that the Legislature meant for NRS 651.015 to establish foreseeability based on an innkeeper’s notice of danger and on the existence of similar wrongful acts as a question of law rather than one of fact.

Based on this clarified standard, the Court concluded that the Silver Nugget’s actions failed to satisfy 651.015(3)(a) because its casino security’s prompt request that the boisterous group leave the premises was a basic minimum precaution designed to ensure patron safety. It also reasoned that there was no way for security to know that Ott had a concealed weapon on his person. The Court further concluded that the Silver Nugget’s actions also failed to meet 651.015(3)(b). Even though prior violent acts involving gunfire occurred outside of the casino and prior fistfights and robberies occurred inside of the casino, perpetrators of these crimes did not use weapons in these crimes and no serious injuries resulted. Therefore, the Court found that these prior acts were not similar enough to give rise to foreseeability as a matter of law.

### **Conclusion**

A wrongful act is not foreseeable and does not give rise to an innkeeper duty as a matter of law unless the innkeeper fails to exercise due care for patron safety or knows of prior incidents of similar wrongful acts. Both of these determinations are for a judge to decide, and if neither is present, summary judgment is proper.

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<sup>3</sup> See Wood v. Safeway, Inc., 121 Nev. 274, 729, 121 P.3d 1026, 1029 (2005).