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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LELA GILBERT, et al.,

Plaintiff(s),

v.

SPIRIT AIRLINES, INC., et al.,

Defendant(s).

2:12-CV-930 JCM (PAL)

ORDER

Presently before the court is defendant Spirit Airlines Inc.’s (“Spirit”) motion for summary judgment. (Doc. # 41). Plaintiffs filed a response in opposition (doc. # 48), and Spirit filed a reply (doc. # 54).

I. Background

In the instant action, plaintiffs Lela, Aundrea, Rodrick, and Jamii Gilbert seek to recover damages based on injuries allegedly caused by Spirit’s conduct prior to the death of their mother Joan Gilbert (“decedent”).

On December 14, 2011, decedent was a passenger on a Spirit flight from Detroit, Michigan to Las Vegas, Nevada. While the flight was en route, decedent suffered cardiac arrest and lost consciousness. Decedent was immediately attended to by Spirit staff as well as three nurses who happened to be passengers on the flight. The nurses employed an AED machine, but did not administer a shock because the machine indicated decedent’s heart was in an unshockable rhythm.

1 The nurses administered CPR until the plane made an emergency landing in Omaha, Nebraska.

2 After the plane landed, decedent was attended to by paramedics from the Omaha Fire
3 Department. These paramedics did not administer a shock, as they determined that decedent’s heart
4 was in an unshockable rhythm. Decedent was rushed to the Creighton University Medical Center,
5 where she was later pronounced dead.

6 Plaintiffs bring claims for negligence, wrongful death based on negligence, negligent
7 entrustment, and negligent infliction of emotional distress, all based on their initial presumption that
8 Spirit did not provide an AED machine to resuscitate decedent on the plane.

9 **II. Legal Standard**

10 The Federal Rules of Civil Procedure provide for summary adjudication when the pleadings,
11 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
12 show that “there is no genuine issue as to any material fact and that the movant is entitled to a
13 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is “to
14 isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24
15 (1986).

16 In determining summary judgment, a court applies a burden-shifting analysis. “When the
17 party moving for summary judgment would bear the burden of proof at trial, it must come forward
18 with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.
19 In such a case, the moving party has the initial burden of establishing the absence of a genuine issue
20 of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213
21 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

22 In contrast, when the nonmoving party bears the burden of proving the claim or defense, the
23 moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
24 element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed to
25 make a showing sufficient to establish an element essential to that party's case on which that party
26 will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails
27 to meet its initial burden, summary judgment must be denied and the court need not consider the
28

1 nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

2 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
3 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
4 *Radio Corp.*, 475 U.S. 574, 586 (1986). To demonstrate the existence of a factual dispute, the
5 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that
6 “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
7 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
8 631 (9th Cir. 1987).

9 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
10 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045
11 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
12 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
13 for trial. *See Celotex Corp.*, 477 U.S. at 324.

14 At summary judgment, a court’s function is not to weigh the evidence and determine the
15 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby, Inc.*,
16 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all justifiable
17 inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is
18 merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at
19 249–50.

20 **III. Analysis**

21 Spirit’s motion for summary judgment is extremely straightforward. Spirit argues because
22 all of plaintiffs’ claims rely upon the presumption that no AED machine was provided, and it has
23 since been revealed by overwhelming evidence that an AED machine was not only provided, but
24 used in the attempt to resuscitate decedent,¹ that summary judgment is appropriate as to all of
25 plaintiffs’ claims.

26
27 ¹ Two of the passengers that assisted decedent while on the flight, Ms. Sarah Peters and Ms. Jenny Erwin,
28 provided extensive deposition testimony detailing their use of the AED machine. (*See, e.g.*, doc. # 41 pp. 18, 21).

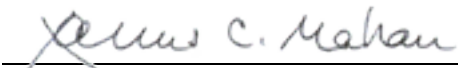
1 In response, plaintiffs acknowledge it is now clear that there was an AED aboard the flight
2 that was used on decedent. (Doc. # 48 p. 2). Plaintiffs also raise vague allegations regarding a faulty
3 oxygen tank aboard the plane that has not been mentioned at any prior stage in the litigation.
4 Plaintiffs state that they intend to file a motion to amend their complaint to alter the entire theory of
5 their claims to focus on the oxygen tank rather than the AED. Though the deadline for amendments
6 as well as the discovery deadline have long passed, plaintiffs have not attempted to file an amended
7 complaint.

8 Despite plaintiffs' audacious attempt to shift the entire focus of their case at the summary
9 judgment stage, the court considers only the claims actually appearing in the complaint and cannot
10 give any regard to nebulous factual assertions brought up at the eleventh hour. All of plaintiffs'
11 claims in this matter depend upon the contention that there was not an AED machine on the Spirit
12 flight—which has been proven false. Thus, plaintiffs have failed to provide evidence showing that
13 Spirit breached a duty owed to decedent, and the court will grant Spirit's motion for summary
14 judgment.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Spirit Airlines
17 Inc.'s motion for summary judgment (doc. # 41) be, and at the same time hereby is, GRANTED. The
18 clerk shall enter judgment accordingly and close the case.

19 DATED April 1, 2014.

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22 **UNITED STATES DISTRICT JUDGE**