



1 refile it after I resolved whether the nurse practitioner could provide causation testimony. After  
2 the *Daubert* hearing, I granted the store’s motion in limine because it was clear that the nurse  
3 was unqualified to provide causation testimony or a reliable opinion, leaving Scolaro without an  
4 expert to testify that her shoulder injury was caused by her fall.<sup>5</sup>

5 The grocer now renews its motion for summary judgment, arguing that Scolaro cannot  
6 prove the causation element of her negligence claim for her shoulder injury<sup>6</sup> because she does  
7 not have an expert to do so. Scolaro does not dispute that she lacks the necessary expert  
8 testimony.<sup>7</sup> Instead, she responds that the store is not entitled to summary judgment because it  
9 has not provided evidence on causation<sup>8</sup> and she doesn’t need an expert to establish causation  
10 because she can do so through circumstantial evidence.<sup>9</sup> But it’s not the store’s burden on  
11 summary judgment to provide evidence for issues on which it does not bear the burden of proof  
12 at trial—it need merely demonstrate that the evidence shows the absence of a genuine material  
13 factual issue.<sup>10</sup> And because I already held that Scolaro needs an expert to prove causation for  
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16 <sup>5</sup> ECF No. 66.

17 <sup>6</sup> See *Clark Cnty. Sch. Dist. v. Payo*, 403 P.3d 1270, 1279 (Nev. 2017) (“It is well established  
18 that to prevail on a negligence claim, a plaintiff must establish four elements: (1) the existence of  
19 a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.”) (quoting *Sanchez*  
20 *v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009)); *Goodrich & Pennington Mortg.*  
*Fund, Inc. v. J.R. Woolard, Inc.*, 101 P.3d 792, 797 (Nev. 2004) (defining proximate cause as  
“any cause which in natural [foreseeable] and continuous sequence, unbroken by any efficient  
intervening cause, produces the injury complained of and without which the result would not  
have occurred”) (citation and internal quotation marks omitted) (alteration in original).

21 <sup>7</sup> See ECF No. 71 at 5 (“Plaintiff can (and does) meet her burden to demonstrate causation  
22 despite being unable to introduce expert testimony as to the cause of her shoulder injury.”).

23 <sup>8</sup> ECF No. 71 at 4–5.

<sup>9</sup> *Id.* at 5–11.

<sup>10</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

1 this injury, I do not reconsider that holding here.<sup>11</sup> So I grant the store’s motion for partial  
2 summary judgment because Scolaro cannot provide evidence to create a genuine issue of fact as  
3 to the causation element of her negligence claim for her shoulder injury because Scolaro needs,  
4 but does not have, an expert to prove that the fall caused her shoulder injury.

5 IT IS THEREFORE ORDERED that Vons Companies, Inc.’s motion for partial summary  
6 judgment [ECF No. 40] is **GRANTED**. At trial, Scolaro may not introduce evidence of her  
7 shoulder injury.



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9 U.S. District Judge Jennifer A. Dorsey  
December 28, 2020

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<sup>11</sup> ECF No. 56 at 18–19.