STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0018

Sharee Nolan,
Appellant,

vs.

Rockin Ronny's,
Respondent.

Filed August 20, 2018
Affirmed
Larkin, Judge

Blue Earth County District Court
File No. 07-CV-17-1033

Sharee T. Nolan, Mankato, Minnesota (pro se appellant)

Rockin Ronny's, Mankato, Minnesota (pro se respondent)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Smith, John, Judge.*

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

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the summary-judgment dismissal of her personal-injury claims, which were based on respondent's installation of an ignition-interlock device in her automobile. We affirm.

FACTS

In January 2016, respondent Rockin Ronny's, an auto shop, installed an ignition-interlock device in appellant Sharee Nolan's automobile. On January 5, 2017, Nolan's vehicle was damaged and her arm was injured when the vehicle shut down while descending a steep hill. Nolan sued Rockin Ronny's in conciliation court, alleging that a defect in either the device or its installation caused the vehicle's failure and her resulting injury. The conciliation court dismissed Nolan's claim with prejudice, noting that Nolan "stated she did not know what caused the [vehicle to] shut down."

Nolan removed the case to district court, and the district court sua sponte scheduled the case for a summary-judgment hearing. After hearing the parties' arguments and considering documents submitted by the parties for and against summary judgment, the district court granted summary judgment for Rockin Ronny's, concluding that there was no evidence of any acts or omissions by Rockin Ronny's that caused Nolan's injuries.

The district court noted that the following evidence was undisputed: the ignition-interlock device "does not have the capability to shut off a vehicle while the vehicle is running" and Nolan "does not know exactly what caused the shut-down of the Vehicle." The district court reasoned that, "[a]s a matter of law, the record . . . does not show that

any acts or omissions on the part of [Rockin Ronny's were] the cause of any claimed injuries to [Nolan]." The district court explained:

> [Nolan] holds a steadfast opinion that the intoxalock device (or the installation thereof) caused her vehicle to stall approximately one year after the installation of such device. However, at best, [Nolan's] steadfast belief merely creates a metaphysical doubt as to the issue of causation . . . it does not create an actual genuine issue of material fact such that this matter need be determined by a jury. Further, the record does not support the notion that [Nolan] herself would be qualified as an expert so as to allow her to testify as to her opinion regarding the installation of the device and causation. Accordingly, her steadfast opinion regarding causation would not be admissible evidence at trial on this matter—leaving the record void of even an allegation of causation, let alone evidence to support that allegation.

Nolan appeals.[1]

D E C I S I O N

Before addressing Nolan's specific assertions of error, we note several principles that govern our review. First, although some accommodations may be made for pro se litigants, they are generally held to the same standards as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Second, "on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it." *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (quotation omitted). And third, the record on appeal consists of "[t]he documents filed in the [district] court, the exhibits, and the transcript of

[1] Rockin Ronny's did not file a brief, and this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

the proceedings, if any." Minn. R. Civ. App. P. 110.01. "It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered." *Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977). With these principles in mind, we turn to Nolan's challenge to the district court's grant of summary judgment.

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No genuine issue of material fact exists "when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). This court reviews a district court's grant of summary judgment de novo. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 150 (Minn. 2014). "We view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law." *Id.*

The arguments in Nolan's brief are difficult to understand. She generally asserts that the district court violated her "Human Rights," but she does not support this assertion with legal argument or authority. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived "unless prejudicial error

is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). Because we do not discern obvious prejudicial error related to the purported human-rights violation, this issue is waived.

Nolan also asserts that "[t]he district court's conclusions in favor of Product of Liability were not supported by substantial evidence." We construe this assertion as a challenge to the district court's determination that there was no evidence of causation. Nolan argues that "Autotronics . . . said it was due to the hook up of the device, (Intoxalock Ignition Device) a fuse blew out . . . to cause the car [to lose] control." The documents that Nolan provided to the district court from Autotronics state, "It is possible that the fuse was overloaded with the normal vehicle amperage load and the addition of the Intoxalock equipment. Since the fuse did not blow again we cannot be sure but we suggest that the Intoxalock power should be rooted from a heavier circuit." The same document states that Autotronics "replaced the fuse and it did not blow again." Other documents submitted by Nolan state, "When an ignition interlock installation is not properly installed, problems will arise immediately after a device has been installed."

We have carefully reviewed the summary-judgment record in the light most favorable to Nolan and we conclude, de novo, that the evidence would not allow a reasonable mind to conclude that Rockin Ronny's January 2016 installation of the ignition-interlock device caused Nolan's vehicle to malfunction on January 5, 2017. We therefore affirm the district court's grant of summary judgment for Rockin Ronny's.

Affirmed.