

[Cite as *Dabney v. Rock Ohio Caesars Cleveland, L.L.C.*, 2017-Ohio-967.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104535

MARK R. DABNEY

PLAINTIFF-APPELLANT

vs.

ROCK OHIO CAESARS CLEVELAND, L.L.C.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-849262

BEFORE: S. Gallagher, J., E.A. Gallagher, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: March 9, 2017

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SEAN C. GALLAGHER, J.:

{¶1} Mark R. Dabney appeals from a grant of summary judgment in favor of Rock Ohio Caesars Cleveland, L.L.C. (“Caesars”), upon Dabney’s claims for assault, battery, intentional infliction of emotional distress, and negligent supervision. We affirm.

{¶2} In his pro se complaint, Dabney alleged that an unknown person placed a substance that resembled semen into Dabney’s throat while he was sleeping in the lounge area of the casino owned by Caesars. Dabney claims he awoke after briefly falling asleep, realized his throat was clogged, and immediately ran to a restroom to spit out the unknown substance. Dabney’s assault and battery and intentional infliction of emotional distress claims are straightforward. All of those claims are based on the single factual allegation that an unknown person placed semen into Dabney’s mouth and throat while he was unconscious. Dabney’s “negligent supervision” claim, as explained in his brief in opposition to summary judgment, was based on his belief that Caesars “ignored its responsibility by allowing [Dabney] to attain a frozen sleep state. [Dabney] showed signs of exhaustion and should have been offered a cup of coffee or escorted to the exit.” Thus, and similar to the other claims, the negligent supervision claim focuses on the allegation that something occurred as Dabney slept.

{¶3} Caesars filed a motion for summary judgment and introduced the video-surveillance recording as evidence, along with an affidavit from the Caesars security employee who reviewed the footage and authenticated the recording. In that

recording, Dabney was depicted falling asleep at the time and date in question, waking up, and proceeding to another area to watch television for an extended period of time. No one approached, spoke with, or came into contact with Dabney during that time. After watching television, Dabney proceeded to two restrooms on different levels of the casino. According to Caesars, Dabney's factual allegation was not substantiated, and therefore, all of his claims failed as a matter of law.

{¶4} Dabney did not contest the factual basis of the motion for summary judgment or Caesars' summary of what the surveillance footage depicted. Importantly, Dabney also did not contest Caesars' identification of him in the recording. Instead, Dabney opined that law enforcement and security forces were using "their public access to impose and even pander punitive sexual behaviors." He claimed, without any evidence, that the casino security employees altered the video surveillance footage. Dabney conceded that he was unaware of who perpetrated the actions of which he complained and how the semen-like substance was inserted into his throat.

{¶5} The trial court entered judgment in favor of Caesars, holding that

Defendant Rock Ohio Caesars Cleveland, LLC's motion for summary judgment is supported by the affidavit of [Caesars' security employee]. [She] states that the surveillance video attached to the affidavit, which shows that plaintiff Mark Dabney was never violated as he alleges in his complaint, represents true and accurate video footage. Dabney has not offered any Civil Rule 56(C) evidence that creates an issue of material fact. Thus, Defendant Rock Ohio Caesars Cleveland, LLC's motion for summary judgment, filed 03/10/2016, is granted.

Dabney timely appealed the final judgment.

{¶6} Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8.

Summary judgment may be granted only when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party.

Marusa v. Erie Ins. Co., 136 Ohio St.3d 118, 2013-Ohio-1957, 991 N.E.2d 232, ¶ 7.

{¶7} Caesars introduced undisputed evidence under Civ.R. 56 that no person, much less a Caesars' employee, placed anything in Dabney's throat during the alleged time frame. All of Dabney's claims relied on the same predicate act. Thus, if the act underlying the causes of action could not be substantiated, none of Dabney's claims arising from that alleged occurrence could survive summary judgment. On this point, Caesars met its burden of informing the court of the basis of its motion and identified evidence demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 288, 1996-Ohio-107, 662 N.E.2d 264.

{¶8} The burden then shifted to Dabney to present rebuttal affidavits or other specified kinds of materials under Civ.R. 56 demonstrating a genuine issue of material fact as to whether the alleged incident occurred. *Id.* at 289. Dabney presented no evidence demonstrating that an assailant placed a biological or any substance in his throat as he slept. Dabney speculated that the video surveillance footage was altered; however, he presented no evidence, admissible or otherwise, to that effect. The only arguments

against summary judgment were based on the allegations in the complaint. A plaintiff, however, cannot rely on allegations in the complaint to create a genuine issue of material fact in response to a well-supported motion filed under Civ.R. 56. *Id.* at 293; Civ.R. 56(E). Further, according to his own allegations, Dabney is unaware of how the unknown substance got into his throat — he was unconscious at the time and could provide no firsthand knowledge. The judgment in favor of the defendant was proper.

{¶9} After reviewing the record, it can only be concluded that the trial court did not err. Summary judgment was properly entered in Caesars' favor upon all claims, and we affirm the judgment of the trial court.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

EILEEN A. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR