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**OPINION, U.S. COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
(APRIL 15, 2024)**

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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BERNICE RUTLAND,

*Plaintiff-Appellant,*

v.

ROBINSON PROPERTY GROUP, L.L.C.;  
CYNTHIA JANIE SCOTT,

*Defendants-Appellees.*

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No. 23-60499

Summary Calendar

Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:21-CV-234

Before: WIENER, STEWART, and DOUGLAS,  
Circuit Judges.

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PER CURIAM:\*

Plaintiff-Appellant Bernice Rutland appeals the  
district court's grant of summary judgment in favor of

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\* This opinion is not designated for publication. See 5th Cir. R.  
47.5.

Defendant-Appellee Robinson Property Group. We AFFIRM.

On September 14, 2019, Rutland and her sister-in-law went to the Robinson-owned Horseshoe Casino in Tunica, Mississippi. While playing a slot machine, Rutland was hit from behind by a motorized scooter. The scooter was operated by another patron, Cynthia Scott, who had rented it from Horseshoe for the day. Rutland complained to casino security of pain in her right leg but refused medical treatment and left the premises. She sued Robinson, Scott, and Desert Medical Equipment (“DME”), the Horseshoe’s scooter supplier, for negligence. After DME was dismissed for failure to serve, the district court granted judgment in favor of Robinson and Scott.<sup>1</sup> Rutland appeals.<sup>2</sup> The district court had jurisdiction pursuant to 28 U.S.C. § 1332. We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.

On appeal, we review a district court’s grant of summary judgment de novo. *United States ex rel. Schweizer v. Canon, Inc.*, 9 F.4th 269, 273 (5th Cir. 2021). Summary judgment is proper when the record shows that “there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists when “the evidence is such that a reasonable jury could return a

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<sup>1</sup> In ruling on Robinson’s motion for summary judgment, the district court also sua sponte dismissed Rutland’s claims against Scott, who is apparently deceased. Rutland does not appeal the district court’s ruling as to Scott.

<sup>2</sup> Rutland was represented in the district court, but appeals pro se.

verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In response to Robinson’s motion for summary judgment, Rutland proffered only a single sworn declaration which consisted of the facts above plus conclusional allegations regarding Robinson’s involvement. Rutland did not offer any other evidence of duty, breach, causation, or damages, elements required to sustain a negligence claim in Mississippi.<sup>3</sup> *See Clinton Healthcare, LLC v. Atkinson*, 294 So.3d 66, 71 (Miss. 2019). An affidavit is insufficient to defeat summary judgment when its factual averments are conclusional or based on mere belief. *Clark v. Am.’s Favorite Chicken Co.*, 110 F.3d 295, 297 (5th Cir. 1997); *see also Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990) (noting that a party cannot defeat summary judgment by “replac[ing] conclusory allegations of the complaint . . . with conclusory allegations of an affidavit”). Rutland thus failed to meet her burden to “come forward with competent summary judgment evidence establishing the existence of a material factual dispute.” *See Clark*, 110 F.3d at 297.

Rutland contends that the district court erroneously ignored three issues of material fact in granting summary judgment: whether Robinson (1) rented the scooter to Scott, (2) owed Rutland a duty of care under premises liability law, and (3) failed to disclose the proper witness for depositions. As Robinson points out, however, even if these issues were disputed, they are

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<sup>3</sup> Rutland brought claims against Robinson for negligence and negligent entrustment. These four elements are required for both causes of action. *See Warren ex ref. Warren v. Glascoe*, 852 So.2d 634, 640 (Miss. Ct. App. 2003).

not material because their resolution would not affect the outcome of the suit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”). This is because Rutland fails to offer sufficient evidence as to any of the required elements of negligence beyond her conclusional affidavit. *See, e.g., Watson v. Johnson*, 848 So.2d 873, 878 (Miss. Ct. App. 2002) (affirming a grant of summary judgment when the plaintiff relied only on his sworn statement in opposition and failed to provide any medical evidence of injury, as “bare assertions are simply not enough to avoid summary judgment”). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Even if the three issues identified by Rutland were disputed, they are not material because they would not affect the outcome of the suit, given Rutland’s failure to offer competent evidence of any of the essential elements of her claims.

AFFIRMED.

**MEMORANDUM OPINION,  
U.S. DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF MISSISSIPPI  
(AUGUST 15, 2023)**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
MISSISSIPPI OXFORD DIVISION**

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**BERNICE RUTLAND,**

*Plaintiff,*

**v.**

**ROBINSON PROPERTY GROUP, LLC., ET AL.,**

*Defendants.*

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**No. 3:21-CV-234**

**Before: Michael P. MILLS,  
United States District Judge.**

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**MEMORANDUM OPINION**

This matter is before the Court on Defendant Robinson Property Group LLC's motion for summary judgment (ECF No. 70). Plaintiff has responded in opposition to the motion, and Defendant has replied. The Court has thoroughly reviewed the record and carefully considered the applicable law. This is the decision of the Court.

## BACKGROUND

In September 2019, Plaintiff Rutland and her sister-in-law, Ms. Reyna, went to the Horseshoe Casino in Tunica, Mississippi, which Defendant Robinson operates, “for some gaming entertainment.” (Rutland Decl., ECF No. 71, PageID.426). While Ms. Rutland was playing a slot machine, another patron driving a motorized scooter collided with her, knocking Ms. Rutland off the swivel chair in which she sat. (*Id.*) It is undisputed that the person driving the scooter, Defendant Cynthia Scott, had rented the scooter from Horseshoe.

Ms. Rutland states in general terms that she “was badly injured from the impact”, but she provides no medical records or other documentation of any specific injury. Ms. Rutland notes that a Horseshoe employee took her statement and took pictures of her immediately after the incident occurred. (*Id.*, PageID. 427). Ms. Rutland refused medical treatment. She complains that “the employees failed and refused to stop the lady operating the motorized scooter” and escorted Ms. Rutland from the casino, which embarrassed her. (*Id.*) Ms. Rutland offers no documentation of any lingering effects of the alleged embarrassment.

As to Defendant Robinson, Plaintiff brings claims of negligence and negligent entrustment. (ECF No. 17).<sup>1</sup> Plaintiff has had ample time to gather evidence

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<sup>1</sup> As to Defendant Cynthia Scott, Plaintiff brings claims of negligent acts and/or omissions and negligence per se. The Court has been advised that Ms. Scott is no longer living, but no party has placed a suggestion of death upon the record.



to support her claims.<sup>2</sup> But her showing on summary judgment consists of a single sworn statement of general allegations lacking specific detail. Defendant Robinson seeks summary judgment in its favor.

### LEGAL STANDARDS

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute as to material fact exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 248 (1986). At the summary judgment stage, the court must “draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000). If a moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law, the nonmoving party “must come forward with specific facts showing a genuine factual issue for trial.” *Harris ex rel. Harris v. Pontotoc Cry. Sch. Dist.*, 634 F.3d 685, 690 (5th Cir. 2011). “[A] party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence.” *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (quoting *Little v. Liquid Air Corp.*, 37 F.2d 1069, 1075 (5th Cir. 1994)). “If the nonmoving party fails to

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<sup>2</sup> The case was removed to this Court in November 2021. The Magistrate Judge has extended the discovery deadline in this case twice (ECF Nos. 60, 64).

meet this burden, the motion for summary judgment must be granted.” *Little*, 37 F.3d at 1075.

### DISCUSSION

In response to Defendant’s motion for summary judgment, Plaintiff Rutland has adduced a single declaration that consists of conclusory allegations and unsubstantiated assertions. Absent a more specific showing of duty, breach, causation, and injury, she cannot prevail in a negligence action. Plaintiff Rutland has failed to meet her burden at the summary judgment stage to demonstrate a genuine issue as to material fact. On this record, summary judgment in favor of Defendant Robinson is appropriate.

The Court has fully examined the record, the exhibits, and the laws in this case and further finds that no claims for damages exist whatsoever. Therefore, the Court rules *sua sponte* that the claims against Defendant Scott should also be dismissed.

### ACCORDINGLY, IT IS ORDERED:

The motion for summary judgment filed by Defendant Robinson Property Group LLC (ECF No. 70) is **GRANTED** and further that the claims against Defendant Cynthia Scott are also **DISMISSED** with prejudice.

This case is **CLOSED**.

**SO ORDERED AND ADJUDGED**, this, the 15th day of August, 2023.

/s/ Michael P. Mills  
United States District Judge  
Northern District of Mississippi

**JUDGMENT, U.S. DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI  
(AUGUST 15, 2023)**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF  
MISSISSIPPI OXFORD DIVISION

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BERNICE RUTLAND,

*Plaintiff,*

v.

ROBINSON PROPERTY GROUP, LLC., ET AL.,

*Defendants.*

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No. 3:21-CV-234

Before: Michael P. MILLS,  
United States District Judge.

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**JUDGMENT**

In accordance with the Memorandum Opinion and Order entered this day and the Orders of July 11, 2022 (ECF Nos. 42, 43), Judgment is entered in favor of Defendants Robinson Property Group LLC and Cynthia Scott and against Plaintiff Bernice Rutland; Defendant Robinson Property Group LLC's cross claim against Desert Medical equipment is dismissed with prejudice (*see* ECF No. 42); and Plaintiff's claims

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against Defendant Desert Medical Equipment are dismissed without prejudice (*see* ECF No. 43).

SO ORDERED AND ADJUDGED, this, the 15th day of August, 2023.

/s/ Michael P. Mills  
United States District Judge  
Northern District of Mississippi

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**ORDER DENYING PETITION FOR  
REHEARING, U.S. COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
(MAY 28, 2024)**

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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BERNICE RUTLAND,

*Plaintiff-Appellant,*

v.

ROBINSON PROPERTY GROUP, L.L.C.;  
CYNTHIA JANIE SCOTT,

*Defendants-Appellees.*

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No. 23-60499

Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:21-CV-234

Before: WIENER, STEWART, and DOUGLAS,  
Circuit Judges.

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PER CURIAM:

IT IS ORDERED that the petition for rehearing  
is DENIED.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**