

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 18 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRIAN KOPEIKIN, M.D.,

Plaintiff-Appellant,

v.

MOONLIGHT BASIN MANAGEMENT,
DBA Moonlight Basin Resort, LLC,

Defendant-Appellee.

No. 15-35186

D.C. No. 2:13-cv-00045-DLC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief Judge, Presiding

Argued and Submitted May 9, 2017
Seattle, Washington

Before: McKEOWN, BEA, and N.R. SMITH, Circuit Judges.

The parties are familiar with the facts so we will not recite them here. We review de novo the district court's grant of summary judgment in favor of Moonlight Basin Management, LLC. *See Fontana v. Haskin*, 262 F.3d 871, 876 (9th Cir. 2001). Dr. Brian Kopeikin appeals that ruling on the ground that the evidence supports sufficient inferences to charge Moonlight Basin with

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

constructive knowledge of the rocks that caused Kopeikin's injuries, and therefore avoid summary judgment with respect to Moonlight Basin's negligence liability despite Montana's Skier Responsibility statutes. *See* Mont. Code Ann. §§ 23-2-702, -731, -733, -736. We need not address the scope of the statutes here. Even if we accept Kopeikin's construction of these provisions, there is no genuine dispute as to a material fact with respect to Moonlight Basin's alleged constructive knowledge of the rocks that caused Kopeikin's injuries. And, as Kopeikin acknowledged, there is no evidence that Moonlight Basin had actual knowledge of the rocks at the time of Kopeikin's accident.

AFFIRMED.