

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARMINE BARRA,  
Appellant,

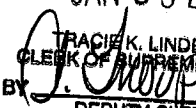
vs.

MARK RICH; AND NEW YORK PIZZA  
& PASTA, INC., D/B/A MARK RICH'S  
NEW YORK PIZZA & PASTA,  
Respondents.

No. 49642

**FILED**

JAN 09 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment entered after a bench trial in a contract action. Eighth Judicial District Court, Clark County; Michael Cherry, Judge, and J. Charles Thompson, Senior Judge.

Appellant Carmine Barra instituted the action below against respondents Mark Rich and New York Pizza & Pasta, Inc., primarily asserting contract-based causes of action, stemming from allegations that Rich violated the parties' oral partnership agreement with respect to New York Pizza & Pasta. According to Barra, the fundamental issue before the district court was whether an enforceable partnership between Barra and Rich existed. After a bench trial, the district court, concluding that no enforceable partnership agreement existed, entered judgment in favor of respondents. This appeal followed.


In considering this appeal, we give deference to the district court's factual findings so long as they are not clearly wrong and are supported by substantial evidence, see NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994), which has been defined as evidence that "a reasonable mind might accept as adequate to support a conclusion." First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (internal quotation marks omitted), superseded

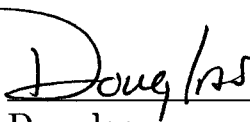
by statute, on other grounds, as stated in Countrywide Home Loans v. Thitchener, 124 Nev. \_\_\_, \_\_\_, 192 P.3d 243, 255 (2008). Moreover, witness credibility determinations are within the district court's fact-finding purview, and we thus will not substitute our or appellant's view of witness testimony for that of the district court. Fox v. First Western Sav. & Loan, 86 Nev. 469, 470 P.2d 424 (1970).

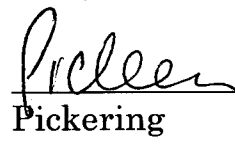
Having reviewed the record, Barra's civil proper person appeal statement, and respondents' response in light of those principles, we conclude that the district court's factual findings were not clearly wrong and are supported by substantial evidence. See NRS 87.070 (providing guidelines for determining the existence of a partnership); Horgan v. Felton, 123 Nev. \_\_\_, \_\_\_, 170 P.3d 982, 985 (2007) (recognizing that substantial evidence may be "inferentially shown by a lack of certain evidence in the record"); cf. Shaw v. Delta Airlines, Inc., 798 F. Supp. 1453, 1455 (D. Nev. 1992) (noting that "there is no specific test to determine the existence of a partnership" and that "[t]he trier of fact must look to the conduct of the parties and all the circumstances surrounding their relationship and transactions" to determine whether an enforceable partnership agreement exists).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Douglas, J.

  
Pickering, J.

cc: Chief Judge, Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Carminc Barra  
Gordon & Silver, Ltd.  
Eighth District Court Clerk