

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN LYNN FERNANDEZ,
Appellant,
vs.
JAMES GREG COX,
Respondent.

No. 74630

FILED

OCT 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Lynn Fernandez appeals from a district court order dismissing his contract action on mootness grounds. First Judicial District Court, Carson City; James E. Wilson, Judge.

Fernandez filed suit against respondent James Greg Cox and the Nevada Department of Corrections (NDOC) regarding a settlement agreement the parties entered into to resolve several civil rights claims Fernandez previously filed. Fernandez argued that NDOC breached the settlement agreement by failing to move him to an out-of-state corrections facility, failing to pay his outstanding filing fees from the prior litigation, and failing to provide a lie detector test and blood and urine testing, all required by the settlement agreement. NDOC filed a motion for summary judgment which presented evidence and argument that all of the conditions of the settlement agreement were either met or no longer feasible as Fernandez had been relocated out of state. Fernandez did not file a timely response to the motion to dismiss.

However, the district court then ordered briefing on whether the entire suit was moot based on the performance of the terms of the settlement agreement. Fernandez responded by saying that he was entitled

to nominal damages as “other such relief” requested in his complaint and to costs as allowed by the settlement agreement. The district court then entered an order dismissing the action as moot, but allowing Fernandez to submit a motion for costs. This appeal followed.

On appeal, Fernandez argues that his complaint was not rendered moot, along with several other errors in the district court. Whether an issue is moot as a question of law that we review de novo. See *Martinez-Hernandez v. State*, 132 Nev. ___, ___, 380 P.3d 861, 863 (2016).

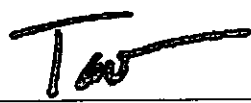
A controversy must be present through all stages of the proceeding. See *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). And though a case may present a live controversy at its beginning, subsequent events may render the case moot. See *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov’t*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004). Fernandez asserts that, even though applicable sections of the settlement agreement have been performed, he is entitled to nominal damages which remain a controversy in this suit. But our de novo review of this matter shows no argument or proof for how Fernandez might establish nominal damages. See *Martinez-Hernandez*, 132 Nev. at ___, 380 P.3d at 863. The settlement agreement does not include any grounds for the damages claimed. See *id.*; see also *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009) (noting that contract interpretation is reviewed de novo). At best, Fernandez is arguing upon speculation which is insufficient to maintain a controversy here. See *Clark Cty. Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 397, 168 P.3d 87, 97 (2007) (noting that the burden to prove the amount of damages is with the plaintiff and speculative testimony to such is insufficient); see also *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006)

(noting that this court does not consider claims that are not cogently argued). Therefore, this is a case “which seeks to determine an abstract question which does not rest upon existing facts” and was properly dismissed. *Nat'l Collegiate Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 57-58, 624 P.2d 10, 10-11 (1981).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Kevin Lynn Fernandez
Attorney General/Carson City
Attorney General/Las Vegas
Carson City Clerk

¹Based on our decision, we decline to consider Fernandez's further alleged errors in the district court. *See NCAA v. Univ. of Nev.*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) (noting the appellate courts “frequently refused to determine questions presented in purely moot cases”).