

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD MATHIS, AN INDIVIDUAL;
AND RICHARD MATHIS, AS TRUSTEE
OF THE JOE ROBINSON MATHIS AND
ELEANOR MARGHERITE TRUST,
DATED JANUARY 15, 1984, AS
AMENDED,
Appellants,
vs.
JAMES MATHIS,
Respondent.

No. 74535-COA

FILED

FEB 26 2019

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

ORDER OF AFFIRMANCE

This is an appeal from district court orders granting a motion to dismiss, and granting summary judgment in part and denying a countermotion for summary judgment in a contract and probate action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

After the death of his parents, appellant Richard Mathis was appointed as trustee over his parents' trust, which named him and his five siblings as beneficiaries, including respondent James Mathis.¹ The trust included two-hundred and forty acres of agricultural land located in Lyon County (the County). Richard contemplated litigation against the Lyon County Public Administrator (the LCPA) and the County for mishandling the trust's property. As a result, Richard wrote a letter to the trust's beneficiaries informing them of his intent to file a lawsuit and provided two options for the beneficiaries to choose with regard to disbursement of the trust's assets. James choose option 1 in which he agreed to disbursement at a later date after the resolution of the lawsuit, and he agreed to waive legal

¹We do not recount the facts except as necessary to our disposition.

action against the trust and Richard for any loss or harm that resulted from remaining part of the trust.

The trust, Richard, James, and another sibling then filed a lawsuit against the LCPA and the County. Because of the lawsuit, the trust's assets depleted, and James advanced funds to the trust with the agreement that he would later be reimbursed upon the sale of the trust's property. After Richard did not respond to James' request for an appraisal of the property, James filed a petition with the district court seeking: an accounting of the trust, reimbursement for advanced funds, removal of trustee, an appraisal of the property, listing of the property, and the reimbursement of proceeds from the sale. Richard objected and argued that James was barred from obtaining the relief he sought due to the waiver James previously signed. The district court assumed jurisdiction of the trust pursuant to NRS 164.010 and determined that James was entitled to an accounting and to seek reimbursement. Richard complied with the order and filed an accounting of the trust and an appraisal of the agricultural land.

Thereafter, the trust and Richard filed a breach of contract case against James, arguing that James was barred from filing a petition against the trust and Richard, which was subsequently consolidated with the trust administration case. James filed a motion to dismiss the breach of contract case and a motion for summary judgment in the trust administration case. The trust and Richard filed a countermotion for summary judgment, arguing that James waived any legal claims against the trust and Richard. After a hearing, the district court granted James' motion to dismiss, concluding that it lacked subject matter jurisdiction over the breach of contract case, as it was duplicative of issues already before it in the trust administrative case. The district court also granted James' motion for summary judgment and

denied the trust and Richard's countermotion for summary judgment, concluding that the letter was not an enforceable contract and James was entitled to reimbursement as a matter of law. This appeal followed.

The district court properly granted the motion to dismiss

Richard argues that the district court has subject matter jurisdiction over the breach of contract case pursuant to NRS 164.010. James, while not disputing that the district court has exclusive jurisdiction over all internal affairs involving the trust, argues that the district court properly dismissed the breach of contract case as duplicative because the issue in the breach of contract case is identical to that of the trust administration case. We conclude that the district court has jurisdiction of the subject matter presented in the breach of contract case; however, we agree with James that the issue presented in both cases is duplicative. Thus, in the interest of fundamental jurisprudence, the district court properly granted James' motion to dismiss.

Subject matter jurisdiction is defined as "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." *Jurisdiction, subject-matter jurisdiction*, Black's Law Dictionary (10th ed. 2014). NRS 164.010(1) provides that the district court, upon the filing of a petition of a beneficiary of the trust, "shall assume jurisdiction of the trust as a proceeding in rem." Further, NRS 164.010(5)(d) provides that "[w]hen the [district] court assumes jurisdiction pursuant to this section," it "[m]ay consider at the same time granting orders on other matters relating to the trust." In this case, the district court assumed jurisdiction over the trust in the course of the trust administration case. The district court further consolidated the breach of contract case with the trust administration case,

as the breach of contract case involves an issue concerning the internal affairs of the trust. Thus, the district court has jurisdiction over the subject matter of the breach of contract case.

Nonetheless, “[i]t would be contrary to fundamental [jurisprudence] to permit two actions to remain pending between the same parties upon the identical cause.” *Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724 (1958) *disapproved on other grounds by Lee v. GNVL Corp.*, 116 Nev. 424, 428 n.3, 996 P.2d 416, 418 n.3 (2000). Here, the breach of contract case and the trust administration case involve the same parties disputing an identical issue, which is whether James was barred from filing his petition in district court based on the waiver contained in the letter. In the trust administration case, the district court ruled that James was not barred from filing his petition. Thus, it would be contrary to fundamental jurisprudence to permit Richard to reargue the same issue in his breach of contract case. Accordingly, although the district court erred in concluding that it lacked subject matter jurisdiction, we conclude that the district court properly granted James’ motion to dismiss Richard’s breach of contract case. *See Saavedra-Sandavol v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 598-99, 245 P.3d 1198, 1202 (2010) (“This court will affirm a district court’s order if the district court reached the correct result, even if for the wrong reason.”).

The district court properly granted summary judgment in part in James’ favor and denied the trust and Richard’s countermotion for summary judgment

Richard argues that the undisputed facts mandate that summary judgment be granted in his favor because James, by signing the letter, waived his right to file any legal action against the trust and Richard.

We disagree with Richard's argument, as the letter did not contain adequate consideration to constitute an enforceable contract.²

"Contract interpretation is subject to a de novo standard of review." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). A district court's decision to grant summary judgment is also reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* All evidence must be viewed in a light most favorable to the nonmoving party. *Id.*

In order for a contract to be enforceable, it must contain "an offer and acceptance, meeting of the minds, and consideration." *May*, 121 Nev. at 672, 119 P.3d at 1257. "Consideration is the exchange of a promise or performance, bargained for by the parties." *Jones v. SunTrust Mortg., Inc.*, 128 Nev. 188, 191, 274 P.3d 762, 764 (2012). Generally, a preexisting duty is not considered adequate consideration. *Cain v. Price*, 134 Nev. ___, ___, 415 P.3d 25, 28 (2018).

Here, the letter did not contain adequate consideration to support a contract. Richard claimed that the LCPA and the County mishandled, lost, or converted personal property from the trust. As a trustee, Richard has a fiduciary duty to protect the trust's assets, which includes filing a lawsuit on behalf of the trust's beneficiaries. *See 7 Am. Jur. 2d Trusts* § 402, (2016) (providing, "[o]ne of the fundamental common-law [fiduciary] duties of a trustee is to preserve and maintain trust assets," which includes the "duty to safeguard, preserve, or protect the trust assets


²In light of our holding, we need not address whether the letter contained definite and certain terms.


and the safety of the principal” (footnotes omitted)). Thus, Richard’s purported consideration—pursing legal action against the LCPA and the County— constitutes a preexisting duty, which generally is not adequate consideration. *Cain*, 134 Nev., Adv. Op. 26, 415 P.3d at 28.

Based on the foregoing, the district court did not err in granting summary judgment in part in James’ favor and denying Richard’s countermotion for summary judgment, as all the evidence demonstrates that no genuine issue of material fact exists, and even in viewing the evidence in a light most favorable to Richard, James is entitled to summary judgment as a matter of law. Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Gloria Sturman, District Judge
Solomon Dwiggins & Freer, Ltd.
Adams Law Group
Mushkin Cica Coppedge
Eighth District Court Clerk