IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT M. HOLPER, AN INDIVIDUAL, D/B/A SCOTT HOLPER LAW GROUP, D/B/A VEGAS TICKET MASTERS,
Appellant,
vs.
MARK COBURN, AN INDIVIDUAL, D/B/A LAW OFFICE OF MARK T. COBURN; AND LAS VEGAS TICKET ATTORNEY,
Respondents.

No. 74592-COA

FILED

APR 24 2019

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

ORDER OF AFFIRMANCE

Scott M. Holper appeals from a district court order granting summary judgment in a tort action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.[1]

Holper, a Las Vegas attorney, sued Mark Coburn, also a Las Vegas attorney, in connection with Coburn's alleged dissemination of defamatory material.[2] Following court-annexed arbitration and subsequent assignment to the short trial program, Coburn moved for summary judgment. In opposition, Holper conceded to summary judgment on six of his ten claims, proceeding only under theories of libel per se and intentional infliction of emotional distress, as well as two different theories of privacy invasion. The short-trial judge granted summary judgment in favor of Coburn on all remaining claims, basing his decision primarily on Holper's failure to produce any evidence of damages or to present any specific facts

[1]Pro Tempore Judge Philip J. Dabney presided over the motion practice and granted summary judgment.

[2]We do not recount the facts except as necessary to our disposition.

demonstrating the existence of a genuine issue of material fact. The short-trial judge additionally concluded that Holper failed to specifically plead presumed damages as part of his libel per se claim and that he was therefore precluded from seeking such damages.

On appeal, Holper argues that reversal is warranted on grounds that he suffered ineffective assistance of counsel below and that he was not required to specifically plead presumed damages. However, as a threshold matter, we must first consider Coburn's argument that Holper failed to timely file his notice of appeal and that we therefore lack jurisdiction to consider this matter.

The timely filing of a notice of appeal is mandatory and jurisdictional. *Mahaffey v. Investor's Nat'l Sec. Co.*, 102 Nev. 462, 463-64, 725 P.2d 1218, 1218-19 (1986). An order granting summary judgment that adjudicated the rights and liabilities of all parties and disposed of all issues in a case constitutes an appealable final judgment. *Lee v. GNLV Corp.*, 116 Nev. 424, 427-28, 996 P.2d 416, 418 (2000); *see also* NRAP 3A(b)(1). A notice of appeal from such a judgment must be filed with the district court after entry of the written judgment and "no later than 30 days after the date that written notice of entry of the judgment . . . is served." NRAP 4(a)(1).

Here, the written order granting summary judgment was filed on October 30, 2017. Holper then filed his notice of appeal with the district court on November 22, 2017. The notice of entry of the order granting summary judgment was later filed with the district court and mailed on December 6, 2017. Accordingly, Holper filed the notice of appeal after entry of the judgment and not later than 30 days after the date the notice of entry was served, and we therefore have jurisdiction to consider this appeal.

Next, we consider whether reversal is warranted on grounds of ineffective assistance of counsel. Holper argues that his counsel's numerous failings to engage in discovery amounted to ineffective assistance of counsel warranting reversal. Coburn counters that Holper may not assert ineffective assistance of counsel in a civil case. We agree with Coburn.

Plaintiffs in civil cases generally have no right to the effective assistance of counsel. *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) ("[W]e find no support . . . for the proposition that the right to an ineffective-assistance-of-counsel argument exists in civil cases."); *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (noting "the presumption that, unless [an] indigent litigant may lose his physical liberty if he loses the litigation, there is generally no right to counsel in a civil case"). Because this is a purely civil tort action, and because there is no allegation or indication that Holper is an indigent litigant in danger of losing his physical liberty, Holper's argument is without merit.

Finally, we consider whether the short-trial judge appropriately granted summary judgment in favor of Coburn. Holper argues primarily that the short-trial judge erred as a matter of law in concluding that Holper was required to specifically plead presumed damages for libel per se in order to seek them at trial. Coburn counters that Holper nevertheless failed to present any evidence of damages to overcome summary judgment.

As an initial matter, we note that the short-trial judge erred when he concluded that Holper failed to properly plead presumed damages for his libel per se claim. In his complaint, Holper pleaded damages as a result of libelous conduct, labeled the claim as "libel *per se*," alleged that the libelous conduct was intended to harm his professional reputation, and

included a generic prayer for general damages, which is the type of damages presumed when a plaintiff proves libel per se. *See Bongiovi v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006) (noting that general damages are "those awarded for loss of reputation, shame, mortification and hurt feelings," and that such damages are presumed upon proof of defamation per se); *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993) (noting that statements "imputing the person's lack of fitness for trade, business, or profession" constitute defamation per se), *receded from on other grounds by Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005). Moreover, to the extent the short-trial judge granted summary judgment on the libel per se claim on grounds that Holper failed to produce a computation of damages under NRCP 16.1, that decision was also in error. *See Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 n.7, 396 P.3d 783, 787 n.7 (2017) (noting that NRCP 16.1 requires only that litigants produce a computation of damages with respect to special damages, not general damages (citing NRCP 16.1 drafter's note (2004 amendment))).

In spite of these errors, we must further note that Coburn's motion for summary judgment was not included in the record on appeal.[3] Moreover, Holper included only part of his opposition and possibly all of Coburn's reply in his appendix. Because of this, we cannot discern all of the

[3]Although the district court transmitted the entire record below to the Nevada Supreme Court as directed under NRAP 30(i) because Holper is representing himself pro se, it appears that the briefing on Coburn's motion for summary judgment was not filed with the district court. Instead, it appears the briefing was served directly on the parties and the short-trial judge, who then filed his order granting summary judgment with the district court.

precise grounds on which Coburn sought summary judgment, and thus we cannot possibly determine whether the short-trial judge properly concluded that Holper failed—by affidavit or otherwise—to identify specific facts demonstrating the existence of a genuine issue of material fact for trial.[4] For example, it is possible that Coburn argued below that Holper could not point to any competent evidence in support of his libel per se claim at all, even apart from the issue of whether actual damages needed to be proven. *See Bongiovi*, 122 Nev. at 577, 138 P.3d at 448 (noting that "an award of presumed general damages must still be supported by competent evidence but not necessarily of the kind that assigns an actual dollar value to the injury" (internal quotation marks omitted)). In that scenario, Holper would had to have set forth specific facts in opposition demonstrating the existence of a triable issue of fact. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1030-31 (2005) ("[T]he non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue.").

Accordingly, we do not have all of the documentation required to fully resolve this issue on the merits, and we must therefore presume that the missing portion of the record supports the short-trial judge's order. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that "appellants are responsible for making an adequate appellate record" and that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the

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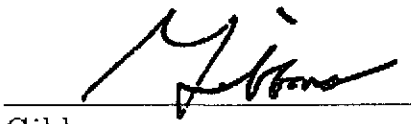
[4]We note that the short-trial judge specifically stated in his order that "[Holper's] opposition to the Motion for Summary Judgment contains no evidence or affidavit for the Court to consider to determine if any questions of fact remain for trial on the issue of damages."

missing portion supports the district court's decision"). Thus, we conclude that the short-trial judge did not err in granting summary judgment in favor of Coburn on all claims against him.

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.



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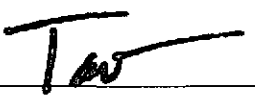
Gibbons



_____, J.
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cc: Hon. Joanna Kishner, District Judge
Scott M. Holper
Marchese Law Office
Eighth District Court Clerk