

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
JEFFREY G. POIRIER, DECEASED.

IGOR NAGEZ,
Appellant,
vs.
ELAINE PATENUADE,
Respondent.

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JEFFREY G. POIRIER, DECEASED.

IGOR NAGEZ,
Appellant,
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ELAINE PATENUADE,
Respondent.

No. 77916-COA

FILED

JUN 26 2020

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

No. 78861-COA ✓

No. 79643-COA

*ORDER OF AFFIRMANCE (DOCKET NO. 77916-COA), ORDER
AFFIRMING IN PART, REVERSING IN PART AND REMANDING
(DOCKET NO. 78861-COA), ORDER OF AFFIRMANCE (DOCKET NO.
79643-COA)*

Igor Nagez appeals from district court orders resolving a petition for an order to convey real property and denying a post-judgment motion for attorney fees in a probate matter. These appeals are not consolidated. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Nagez's former partner and close friend, Jeffrey Poirier, died intestate, leaving his mother, respondent Elaine Patenaude, as his sole heir. At the time of his death, Poirier was the record titleholder of four residential properties in Las Vegas: 4604 Quantana Court (Quantana), 5912 Heron Avenue (Heron), 5909 Rae Drive (Rae), and 409 Bedford Road (Bedford). Poirier resided at Heron along with Nagez and his now husband, Joseph Whitten, and the other three properties were rented out as investments (the rental properties). For some time after the initiation of the underlying probate proceeding, Nagez continued to reside at Heron and act as property manager for the rental properties. But when Patenaude and her attorney—acting as co-administrators of Poirier's estate (the Estate)—sought to evict Nagez from Heron and forced him to relinquish management of the rental properties to their chosen property-management company, Nagez filed a petition in the district court under NRS 148.410 for an order requiring the Estate to transfer title to all four of the properties to him.¹ Nagez claimed that he had purchased all of the properties with his own funds and that he was the rightful owner.

¹In relevant part, NRS 148.410 provides that an interested person may petition the court for an order directing the personal representative of an estate to transfer title to real property from the decedent to the petitioner. NRS 148.410(1)(a), (8).

In the petition, Nagez pleaded three separate theories of recovery. First, he contended that Poirier was holding the properties for him in constructive trust. In the event that the district court did not rule in his favor on the constructive-trust theory, Nagez alleged that he and Patenaude had entered into a written contract after Poirier's death whereby they agreed that Nagez would take title to Heron, that Patenaude would take her choice of one of the three remaining properties, and that Nagez would then take the other two. Nagez sought specific performance of the contract, contending that Patenaude had breached it by refusing to convey any of the properties and by taking action inconsistent with Nagez's rights under the agreement. Finally, in the event that the district court did not rule in Nagez's favor on either of the aforementioned claims, he contended that he was entitled to funds he expended in maintaining the properties, as well as the resulting appreciation in their value, under a theory of unjust enrichment.

The district court entered an order setting Nagez's constructive-trust claim for an evidentiary hearing and bifurcating the matter such that the breach-of-contract and unjust-enrichment claims would be decided later, if necessary. Following a discovery period and the evidentiary hearing, the district court entered an order finding that all four of the properties were purchased, at least in part, with Nagez's funds and that Poirier was holding the rental properties for Nagez in constructive trust. But the district court also found that the course of conduct between Nagez and Poirier (namely their commingling of assets and the random distributions of income from the rental properties Nagez would make to Poirier from time to time) indicated that Poirier had an undetermined ownership interest in the rental properties.

Additionally, and in light of this course of conduct, the district court determined that Poirier had a one-third ownership interest in Heron at the time of his death by virtue of his residing at the property with Nagez and Whitten, and that the Estate was therefore entitled to one third of Heron's value at the time of Poirier's death.² However, the district court also concluded that the contract between Nagez and Patenaude was a valid settlement agreement, and it therefore ordered that Patenaude was entitled to choose one of the rental properties to take as her own and that Nagez was entitled to take the other two in accordance with the terms of the contract. Finally, the district court stated that it would reduce its rulings to judgment after Nagez and the Estate each submitted an accounting relating to their respective income and expenses for the properties at all relevant times, and it stated that all other claims between the parties were denied.³

Later, the district court entered three separate orders finally disposing of Nagez's petition. In the first (from which Nagez appeals in Docket No. 77916-COA), the district court quieted title to Quantana in favor of Patenaude, as per her choice under the written agreement. In the second, the district court quieted title to Rae and Bedford in favor of Nagez. And in the third (from which Nagez appeals in Docket No. 78861-COA), the district court calculated one third of Heron's value at the time of Poirier's death and awarded the Estate that sum. It also awarded the Estate the amount of rent Nagez had collected from Quantana—less the amount of expenses he

²On this point, the district court noted that Whitten had not asserted any claim to Heron or any of the other properties in the underlying proceeding.

³We note that this denial did not pertain to Nagez's separately asserted creditor's claims, which remain pending below.

incurred—prior to the time at which the Estate took over management of the property, and it awarded amounts to the Estate for the expenses it incurred on Rae and Bedford—less the rents it collected—after the time at which it took over management of those properties.

Nagez then filed a motion requesting attorney fees and costs, arguing that he was a prevailing party and that his recovery constituted a more favorable judgment than that which he had offered to have taken against him in a previous settlement offer. He also requested that the district court award him additional sums under his breach-of-contract and unjust-enrichment claims. In a written order (from which Nagez appeals in Docket No. 79643-COA), the district court awarded Nagez his costs, but it denied the rest of his motion. The district court had concluded at the hearing on the motion that Nagez was not entitled to attorney fees because his pre-petition settlement offer was not a proper offer of judgment under NRCP 68. The district court also concluded that Nagez was not entitled to any recovery on his claims for breach of contract and unjust enrichment because the court had already ruled in his favor on his constructive-trust claim, and the other claims were pleaded solely as alternative theories of recovery should he not recover under constructive trust. These appeals followed.

Nagez asserts numerous arguments on appeal, which we address as necessary herein. In a probate matter, we defer to the district court's findings of fact so long as they are supported by substantial evidence, but we review legal determinations de novo. *Waldman v. Maini*, 124 Nev. 1121, 1129-30, 195 P.3d 850, 856 (2008).

Docket Nos. 77916-COA and 78861-COA

With respect to the district court's orders quieting title to Quantana in favor of Patenaude and awarding the Estate one third of

Heron's value at the time of Poirier's death, Nagez argues that the district court erred by enforcing only part of his written agreement with Patenaude, thereby giving Patenaude—whom Nagez characterizes as a breaching party—the benefit of her bargain and denying Nagez his. Specifically, Nagez contends that the district court ignored the plain language of the agreement, which provided in relevant part that he would take full title to Heron and two of the rental properties in exchange for Patenaude selecting one of the rental properties as her own.⁴

Reviewing the plain language of the agreement de novo, see *DeChambeau v. Balkenbush*, 134 Nev. 625, 629, 431 P.3d 359, 362 (Ct. App. 2018) (“In the absence of ambiguity or other factual complexity, interpreting the meaning of contractual terms presents a question of law that we review de novo.”), we agree with Nagez. The district court concluded that the

⁴Nagez also takes issue with the district court's decision to rule on contractual grounds and thereby effectively reach his breach-of-contract claim, even though it had bifurcated Nagez's petition and set the evidentiary hearing solely for his constructive-trust claim. Although we acknowledge the peculiarity of the district court's procedural approach, Nagez does not demonstrate that he was in any way prejudiced by it. See *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (“When an error is harmless, reversal is not warranted.”). Indeed, the district court considered evidence and arguments pertaining to the agreement, and the only substantive challenge Nagez makes to the validity of the agreement itself—a vague allegation that Patenaude somehow fraudulently induced him to enter into it because he was depressed and grieving over Poirier's death—is without merit. See *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (setting forth the elements required to establish fraud in the inducement, which include making a false representation with the intention of inducing the other party to enter into the contract). Moreover, even if Nagez were correct on this point, such a position contradicts his own efforts to enforce the agreement in these proceedings.

agreement was an enforceable contract, yet it deviated from the express terms of that contract when it declined to order that Nagez take full title to Heron. The only rationale the district court provided for doing so in its original order following the evidentiary hearing was that “certain terms [of the contract] do not comport with the equitable principals [sic] under which Probate matters are governed,” and that the contract supposedly “fail[ed] to account for Jeffrey’s interest in [Heron].”

Generally, the courts “are not free to modify or vary the terms of an unambiguous agreement.” *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. 476, 376 P.3d 151 (2016) (quoting *All Star Bonding v. State*, 119 Nev. 47, 51, 62 P.3d 1124, 1126 (2003)). And here, the district court did not identify any ambiguity in the agreement’s terms, nor did it make any finding that the terms somehow deviated from the true intentions of the parties such that the equitable remedy of reformation would be warranted. See 76 C.J.S. *Reformation of Instruments* § 25 (2018) (“A written contract may be reformed if its language does not reflect the true intent of both parties.”). Accordingly, the district court erred in failing to either enforce the agreement according to its plain terms or provide an adequate basis for not doing so.

We therefore reverse the portion of the district court’s order appealed from in Docket No. 78861-COA entitling the Estate to one third of Heron’s value at the time of Poirier’s death, and we remand this matter to the district court for further proceedings consistent with this disposition. However, because Nagez has not provided any basis for reversing the portion of that order awarding amounts to the Estate associated with rents and expenses for Quantana, Rae, and Bedford, we affirm that portion of the

order.⁵ For the same reason, we also affirm the district court's order appealed from in Docket No. 77916-COA quieting title to Quantana in favor of Patenaude in accordance with the parties' agreement.

Docket No. 79643-COA

Nagez also challenges the district court's order denying his request for attorney fees and for recovery of funds under his breach-of-contract and unjust-enrichment claims. With respect to the district court's decision that Nagez was not eligible for fees under NRCF 68, he does not argue that his pre-petition settlement offer to Patenaude/the Estate actually constituted a valid offer of judgment under that rule; instead, he contends that the district court should have construed the offer as such because his counsel at the time led him to believe that it would have that effect, and Nagez—a non-lawyer—lacked the knowledge necessary to understand that was not true. But Nagez cannot avoid proper application of the law on grounds that he lacked knowledge of procedural rules. See *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 259 (2018) (noting that a “litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements”); *Sengel v. IGT*, 116 Nev. 565, 572, 2 P.3d 258, 262 (2000) (recognizing that the public has constructive knowledge of state law).

⁵On this point, Nagez contends primarily that the district court erred in awarding the Estate its expenses for renovating Rae and Bedford because it supposedly incurred those expenses as a result of its own conduct. However, as set forth in more detail *infra*, such a claim exceeds the limited scope of the litigation below, which was simply to determine ownership of the properties and other rights and obligations stemming directly therefrom. We take no position on this claim except to note that Nagez is free to seek further relief in the context of his pending creditor's claim related to the properties.

Accordingly, we discern no error in the district court's decision on this point. *See In re Execution of Search Warrants*, 134 Nev. 799, 801, 435 P.3d 672, 675 (Ct. App. 2018) (noting that, although decisions regarding attorney fees are generally reviewed for an abuse of discretion, we review decisions regarding a party's legal eligibility for fees under a rule or statute de novo).

With respect to the district court's denial of Nagez's request to recover additional funds under his breach-of-contract and unjust-enrichment claims on grounds that he had already recovered under his constructive-trust claim, he argues essentially that he pleaded the former claims in addition to the latter, rather than in the alternative, and the district court therefore erred by not reaching them. But Nagez's petition expressly set forth each successive claim in the alternative in the event that he did not recover on the preceding claim. Moreover, to the extent he did not fully recover under his constructive-trust claim—and in the event the district court does not provide him all of the relief he requested as part of his breach-of-contract claim on remand—Nagez sought only specific performance in connection with the contract claim as pleaded in his petition, not money damages.

Finally, to the extent Nagez might be entitled to further recovery under his unjust-enrichment claim (which, again, was only asserted in the event he did not recover under constructive trust or breach of contract theories), the district court made clear throughout the proceedings below that the litigation of Nagez's petition was limited solely to determining ownership of the subject properties and providing for other appropriate relief attendant thereto. *See* NRS 148.410(8) (providing that, if the district court is satisfied that a transfer of property should be made, it shall enter an order directing the transfer "or granting other appropriate

relief"). Accordingly, the district court's rulings below were limited to quieting title to the subject properties in favor of their lawful owners and apportioning income and expenses from the properties among the parties based upon their ownership interests. Should Nagez wish to recover additional sums from the Estate in connection with its conduct in managing the properties (which extends beyond mere questions of ownership), as indicated *supra* note 5, he is free to seek such relief in the context of his timely-filed creditor's claim regarding the properties.⁶ See NRS 147.130 (setting forth the applicable procedures for litigating a creditor's claim not accepted by the personal representative of an estate).

In light of the foregoing, we discern no error in the district court's denial of both Nagez's request for attorney fees and his request for further recovery in the context of his petition under NRS 148.410. Accordingly, we affirm the district court's order appealed from in Docket No. 79643-COA.

Conclusion

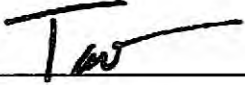
In sum, we affirm the district court's order appealed from in Docket No. 77916-COA quieting title to Quantana in favor of Patenaude. We also affirm the portion of the district court's order appealed from in Docket No. 78861-COA awarding amounts to the Estate associated with rents and expenses for Quantana, Rae, and Bedford, as well as the district

⁶Similarly, with respect to Nagez's contention in Docket No. 77916-COA that the district court ignored the extent to which he is supposedly entitled to settlement proceeds and reimbursement from the Estate for expenses he paid in a separate wrongful-death litigation, the district court repeatedly (and correctly) informed him that he would be able to seek such relief in the context of his creditor's claim on that subject.

court's order appealed from in Docket No. 79643-COA denying Nagez's request for attorney fees and for further recovery under his breach-of-contract and unjust-enrichment claims. Finally, we reverse the portion of the district court's order appealed from in Docket No. 78861-COA awarding the Estate one third of Heron's value at the time of Poirier's death, and we remand this matter to the district court for further proceedings consistent with this order.⁷

It is so ORDERED.⁸


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁷Insofar as Nagez raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not provide a basis for relief or need not be reached given the disposition of this appeal.

⁸Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

cc: Hon. Gloria Sturman, District Judge
Igor Nagez
James Kwon, LLC
Eighth District Court Clerk