IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SUMMIT COLLECTION SERVICES,
Appellant,
vs.
EDWARD ELWIN SCOTT; SCOTT INVESTMENTS; THE PELLET COMPANY, A/K/A THE PELLET COMPANY II; AND CHRISTINA BRIGGS,
Respondents.

No. 78328-COA

FILED

OCT 29 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART,

REVERSING IN PART AND REMANDING

Summit Collection Services (Summit) appeals from a district court judgment following a short trial jury verdict in a contract action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

After acquiring the underlying claims by assignment, Summit sued respondents for monies due and owing. The matter was assigned to the court-annexed arbitration program, and the arbitrator entered an award in favor of Summit. Respondents then requested a trial de novo, and the matter proceeded through the short trial program. Following trial, the jury returned a verdict in favor of Summit, and Summit moved for an award of attorney fees, costs and interest. The judge pro tempore then submitted a proposed judgment to the district court awarding Summit the amount

reflected in the verdict, as well as amounts for attorney fees and costs, with interest thereon.

Summit objected to the judge pro tempore's proposed judgment on various grounds, including that it failed to award prejudgment interest and that it arbitrarily failed to award certain costs. Summit also argued that the judge pro tempore billed the parties for an amount of fees exceeding the maximum amount to which he was entitled under the Nevada Short Trial Rules, and that he failed submit an itemized bill to the parties within 10 days of the jury verdict as required for him to recover his fees and costs, such that disgorgement of those amounts was warranted. In a written order, the district court determined that the jury's verdict accounted for prejudgment interest, and it therefore denied Summit's request for the same. With respect to costs, the district court determined that Summit had failed to support of its memorandum of costs with sufficient documentation, and it granted Summit leave to supplement the memorandum. Likewise, the district court declined to rule on any issues surrounding the judge pro tempore's fees and costs, and it granted Summit leave to provide further information on that point.

Summit's counsel then submitted a supplemental filing to the district court with a letter from the judge pro tempore and his itemized bill attached. However, Summit submitted its supplemental memorandum of costs to the district court without its counsel's signature; instead, the supplemental memorandum was signed only by a manager of Summit. After considering these supplemental filings, the district court issued its final order and judgment. Therein, the district court failed to address

whether the judge pro tempore timely submitted his itemized bill to the parties. Instead, the district court evaluated the charges, determined they were reasonable and did not exceed the maximum amount of charges allowed under the short trial rules, and denied Summit's request for disgorgement. The district court also struck Summit's supplemental memorandum of costs under NRCP 11[1] and WDCR 23 on grounds that it was submitted without counsel's signature and therefore constituted a "rogue document." Accordingly, the district court denied Summit's request for additional costs, and it confirmed the final amount of the judgment against respondents. This appeal followed.

Summit contends this court should reverse the district court's judgment for multiple reasons. First, it contends that the district court should have ordered the judge pro tempore to return the two $875 deposits the parties paid to cover his fees and costs—and that respondents' deposit should be awarded to Summit toward satisfaction of the judgment—on grounds that the judge pro tempore failed to timely submit his itemized bill to the parties.[2] Under the Nevada Short Trial Rules, a judge pro tempore

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[1]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). We cite the prior versions of the applicable rules herein, as they were in effect at all relevant times.

[2]Summit also repeats its argument from below that the judge pro tempore wrongfully charged the parties for $1,750 in fees, which exceeds

must submit an itemized bill to the parties within 10 days of the verdict to recover his or her fees and costs. NSTR 28(b); NSTR 29(b). In support of its contention that the judge pro tempore failed to do so here, Summit points to the letter and itemized bill from the judge pro tempore, which were prepared and sent well after the expiration of the 10-day period. And although the letter provides that the itemized bill was a revised statement—thereby indicating that the judge pro tempore might have previously submitted an earlier version to the parties—Summit acknowledges this and maintains that no prior bill was ever sent. Because the district court did not directly address this issue, and because it hinges upon a factual question as to whether any itemized bill was submitted to the parties within the requisite 10-day period, we reverse the district court's judgment in part and remand so that it may address this issue in the first instance. *See 9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (providing that "this court will not address issues that the district court did not directly resolve"); *Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (noting that "[a]n appellate court is not particularly well-suited to make factual determinations in the first instance").

Summit next argues that the district court erroneously struck the supplemental memorandum of costs because it was not signed by Summit's counsel. Specifically, Summit contends that NRS 18.110(1)

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the $1,500 cap set forth in NSTR 28(a). But as the district court properly concluded, the amount charged included both the $1,500 maximum for fees under NSTR 28(a) and the $250 maximum for costs under NSTR 29(a).

expressly permits either the party itself or its agent or attorney to verify a memorandum of costs, and that the supplemental memorandum here satisfied the statute because it was verified by a manager of Summit. Accordingly, Summit reasons, the district court applied local rules in a manner that impermissibly conflicted with a controlling statute. But Summit ignores the extent to which the district court relied on NRCP 11(a), which provides that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party." And there is no conflict between the verification requirement under NRS 18.110(1) and the additional procedural requirement under NRCP 11(a) that all papers submitted by a represented party must be signed by that party's attorney. Thus, Summit fails to demonstrate that the district court erred on this point,[3] *see Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 662, 188 P.3d 1136, 1142 (2008) (reviewing the interpretation of Nevada Rules of Civil Procedure de novo), and we therefore affirm the

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[3]We note that NRCP 11(a) provides that "[a]n unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party," and the record does not reveal whether the omission here was called to Summit's attention prior to the district court's decision to strike the supplemental memorandum. Regardless, because Summit does not argue that it was denied an opportunity to correct the supplement, we need not address this issue. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised on appeal are deemed waived).

portion of the judgment striking Summit's supplemental memorandum of costs.[4]

Finally, Summit argues that the district court erred in failing to award it prejudgment interest on the amounts owed from the date they came due under NRS 99.040(1), which sets forth how to calculate interest in contract cases "[w]hen there is no express contract in writing fixing a different rate of interest." Specifically, Summit contends that the district court incorrectly found that the jury had already considered the issue of interest when it rendered its verdict. But in its order, the district court noted that it had reviewed the exhibits admitted at trial and that they demonstrated that Summit's predecessor had charged a specific interest rate in connection with the monies due. The district court further noted that the jury had submitted a question to the judge pro tempore indicating that it did not know how to determine the precise amount of money respondents owed to Summit's predecessor. Given the jury's confusion and the extent to which the amount it awarded to Summit did not correspond with any particular invoice or combination of invoices presented at trial, the

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[4]Summit also contends that its counsel effectively signed the supplemental memorandum because he had already signed the original memorandum, and the supplement "reflect[ed] back" to the original as a supplemental pleading under NRCP 15(d). But even assuming the supplement constituted such a pleading, Summit fails to offer any explanation as to why it would not still be subject to the signing requirement of NRCP 11(a). *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

district court declined to disturb the judge pro tempore's decision not to separately award prejudgment interest on grounds that the jury had already considered the issue and figured interest into its verdict. Because Summit failed to include any of the trial exhibits in the record on appeal, we are unable to fully evaluate the district court's decision on this point. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). Consequently, we affirm the portion of the judgment declining to award prejudgment interest.

In sum, we reverse the portion of the district court's judgment denying Summit's request for disgorgement of the amounts the parties paid to the judge pro tempore in connection with his fees and costs, and we remand this matter for further proceedings on that issue consistent with this order. However, we affirm the remainder of the judgment.

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Connie J. Steinheimer, District Judge
Clifton J. Young
Christina Briggs
Edward Elwin Scott
Scott Investments
The Pellet Company
Washoe District Court Clerk