IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTI GIUDICI,
Appellant,
vs.
PAUL GIANOLI, AN INDIVIDUAL, AND AS A MEMBER OF PINER HOLDINGS, LLC, F/K/A WESTERN NEVADA MATERIALS, LLC, A NEVADA LIMITED LIABILITY COMPANY; WESTERN NEVADA TRANSPORT, LLC, A NEVADA LIMITED LIABLITY COMPANY; WESTERN NEVADA RAIL PARK, LLC, A NEVADA LIMITED LIABILITY COMPANY; OXBORROW TRUCKING COMPANY, INC., A NEVADA CORPORATION; EAGLE LEGAL, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 83281

FILED
DEC 15 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment on fraudulent-transfer and conspiracy-to-defraud claims. Second Judicial District Court, Family Division, Washoe County; Sandra A. Unsworth, Judge.

Appellant Kristi Giudici alleges that respondent Paul Gianoli entered into a conspiracy with her now former husband, nonparty Martin Giudici, to defraud and deprive Kristi of her community-property interest in four Nevada entities previously owned, at least in part, by Martin and

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presently owned, at least in part, by Gianoli.[1] Kristi asserts that Martin and Gianoli accomplished the conspiracy by a series of transfers that occurred before and during Kristi's divorce from Martin pursuant to several so-called transfer agreements in which Gianoli agreed to forgive allegedly dubious or inflated debt owed by Martin in exchange for Martin's interests in the above mentioned entities. Based on those allegations, Kristi also seeks to void the transfers from Martin to Gianoli under the Uniform Fraudulent Transfer Act (UFTA), alleging that Gianoli received the transfers for less than their reasonable value and that Martin made the transfers with the intent to defraud her. After Gianoli moved for summary judgment on all claims, the district court granted summary judgment on the ground that the claims were barred by their respective statutes of limitations. Kristi's appeal followed.

Standard of review

We review "an order granting summary judgment de novo." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Summary judgment as a matter of law is appropriate if the movant shows no genuine dispute of material fact based on "the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, . . . properly before the court" and admissible at trial. *Id.* (quoting *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)). Once the movant makes such a showing, the burden shifts to the nonmovant to

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[1]Those entities are named respondents Western Nevada Materials, LLC, Oxborrow Trucking Company, Inc., Western Nevada Transport, LLC, and Western Nevada Rail Park, LLC. There are no pending claims against these respondents, nor against respondent Eagle Legal, LLC.

come forward with "specific facts that show a genuine issue of material fact." *Id.* at 603, 172 P.3d at 134.

Summary judgment on Kristi's fraudulent-transfer claim under the UFTA is appropriate because she did not demonstrate a genuine issue of material fact and she does not qualify as a creditor or an agent of a creditor

The UFTA aims "to prevent a debtor from defrauding creditors by placing the subject property beyond the creditors' reach." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 622, 426 P.3d 593, 597 (2018) (quoting *Herup v. First Bos. Fin., LLC*, 123 Nev. 228, 232, 162 P.3d 870, 872 (2007)). To that end, NRS 112.210(1)(a) & (b) allows a creditor to void an asset transfer or attach an asset transferred to the third-party transferee if the debtor's transfer falls within one of three categories: "(1) actual fraudulent transfers; (2) constructive fraudulent transfers; and (3) certain transfers by insolvent debtors."[2] *Herup*, 123 Nev. at 233, 162 P.3d at 873 (footnotes omitted). An actual fraudulent transfer occurs when "the debtor made the transfer or incurred the obligation . . . [w]ith actual intent to hinder, delay or defraud any creditor of the debtor." NRS 112.180(1)(a). By contrast, a constructive fraudulent transfer arises when "the debtor made the transfer or incurred the obligation"

> (b) [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (1) [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (2) [i]ntended to incur, or believed or reasonably should have believed that the debtor

[2]Kristi appears to rely on both the actual and constructive fraudulent-transfer theories.

> would incur, debts beyond his or her ability to pay as they became due.

NRS 112.180(1)(b).

However, neither the UFTA nor the transfer creates a cause of action for the creditor. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 118-19, 345 P.3d 1049, 1053 (2015). Instead, the UFTA provides a mechanism in equity for a creditor "to recover the property, or payment for its value," pursuant to an existing claim against the debtor, as opposed to the transferee, that allows the creditor to return to the "pre-transfer position." *Id.* at 118, 345 P.3d at 1053. A creditor is any person with a claim. NRS 112.150(4). A debtor is any person liable on the claim. NRS 112.150(6).

In the district court briefing, Kristi did not present sufficient admissible evidence to establish a genuine dispute of material fact on her fraudulent-transfer claim under the UFTA. *See In re Cay Clubs*, 130 Nev. at 935, 340 P.3d at 573 (requiring "admissible evidence to show a genuine issue of material fact"). In support of her claim that she offered "substantial evidence" of a fraudulent transfer, Kristi directs us to a portion of her opposition to summary judgment that contains no citations to the record. As far as the actual fraudulent-transfer theory, she fails to show that any of the so-called badges of an actual intent to defraud exist here. *See* NRS 112.180(2) (providing factors for actual fraudulent transfer). And in support of the constructive fraudulent-transfer theory, Kristi contends that she does not need to prove the amount of the assets at issue, despite the requirement to show an absence of a "reasonably equivalent value in exchange for the transfer." NRS 112.180(1)(b) (defining constructive fraudulent transfer). Accordingly, Kristi fails to show a genuine dispute of material fact regarding her claim under the UFTA. *See Cuzze*, 123 Nev. at

603, 172 P.3d at 134 ("[T]he nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.").

We are also not persuaded that the marital community is a creditor within the meaning of the UFTA. To avoid the application of a Marital Settlement Agreement between Kristi and Martin in which the former spouses released all claims against each other, Kristi asserts that the marital community, rather than Kristi personally, qualifies as a creditor under the UFTA. As one of its purported agents, Kristi thus contends that she is entitled to assert the marital community's fraudulent-transfer claim under the UFTA. We disagree.

While "the marital community" is a distinct concept from the property that comprises the marital community, the marital community is not a separate legal entity with the ability to assert claims against any of the spouses that form that marital community. *See, e.g.*, *Malmquist v. Malmquist*, 106 Nev. 231, 238, 792 P.2d 372, 376 (1990) (discussing "the community" entitlement to reimbursement). Instead, the marital community refers to "a partnership to which both parties [to the marriage] contribute." *See York v. York*, 102 Nev. 179, 181, 718 P.2d 670, 671 (1986). And simultaneously, it refers to "property owned in common by [the spouses], with each having an undivided one-half interest" based on that partnership. *McNabney v. McNabney*, 105 Nev. 652, 659, 782 P.2d 1291, 1295 (1989); *see also W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 938, 840 P.2d 1220, 1224 (1992) (explaining that while nonmarried, cohabitating couples may acquire property in a manner analogous to married couples, "community property is a creature of statute which arises after a couple is legally married"). While we have yet to specifically address the marital

community's status as an independent legal entity, we agree with other authorities that expressly disclaim the idea. *See, e.g.*, *Bridges v. Bridges*, 692 So. 2d 1186, 1192 (La. Ct. App. 1997) (explaining "that the community regime is not a legal entity but a patrimonial mass, that is, a universality of assets and liabilities"); *deElche v. Jacobsen*, 622 P.2d 835, 838, 839 (Wash. 1980) (discussing that Washington courts "have never held that a partnership or a marital community is a legal person separate and apart from the members composing the partnership or community," but noting that references to "the community" enable courts "to keep it distinct in legal contemplation" from the community property (quoting *Bortle v. Osborne*, 285 P. 425, 427 (Wash. 1930))); 15B Am. Jur. 2d *Community Property* § 5 (Aug. 2022 update) (observing that "[t]he marital community is not a legal entity, and cannot own property or have obligations, but rather, the community is like, or in the nature of, a partnership between [the spouses]" (footnote omitted)).

Kristi's cited authority does not persuade us that the marital community exists as an independent legal entity capable of accruing and asserting claims independent of the divorce action against the spouses yet through the spouses. In *Chandra v. Schulte*, we reasoned that even though the spouses, "as a community," had been "defrauded by" one spouse's unilateral actions "as an individual" during the marriage, the wrongdoer spouse's actions did not permit the innocent spouse "to fictitiously remove [the wrongdoer spouse] from the community at the time of the fraud . . . [to] assert a claim that," by statute, required the innocent spouse to disclaim her co-owner status over the community property. 135 Nev. 499, 504, 454 P.3d 740, 745 (2019). Our discussion of a wrongdoer spouse as an individual, whose actions affected the spouses as a community, only

underscored the principle that the community constitutes a partnership of co-equal, undivided property ownership by two separate, married individuals, where one spouse's unilateral actions do not destroy the community-property form. *See* NRS 123.225(1) (recognizing "present, existing and equal interests" held by "each spouse in community property during continuance of the marriage"); NRS 123.230 (providing that, except in limited, enumerated circumstances, "either spouse, acting alone, may manage and control community property, . . . with the same power of disposition as the acting spouse has over his or her separate property"). However, a scenario in which one spouse may assert the claims of the marital community against the other spouse allows the suing spouse to effectively override the other spouse's equal ownership rights in the property under the veneer of acting on behalf of some nebulous rendition of the marital community. And a view of the community as independent from the partnership itself disregards that the community only exists with the formation of a marital relationship and the participation of both spouses. *See Boggs v. Boggs*, 520 U.S. 833, 840 (1997) (discussing community-property regimes generally, and stating the regime reflects "commitment to the equality of [the spouses] and reflects the real partnership inherent in the marital relationship"). Nor does Kristi provide authority even suggesting the marital community has an enforceable claim against any of the spouses that compose the marital community.

Accordingly, Kristi qualifies as neither a creditor nor an agent of a creditor under the UFTA as the marital community does not constitute a legal entity that acts through so-called agent spouses. Therefore, we affirm the district court's grant of summary judgment, albeit on different grounds, without reaching the statute-of-limitations issue. *Cf. Saavedra-*

Sandoval v. Wal-Mart Stores, Inc., 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (affirming a district court's order that "reached the correct result, even if for the wrong reason").

Summary judgment on Kristi's conspiracy-to-defraud claim is appropriate because no admissible evidence establishes a genuine dispute of material fact

Kristi contends that she provided sufficient support of a genuine dispute of material fact for her conspiracy-to-defraud claim, citing primarily to her declaration attached to her opposition to the motion for summary judgment below. We disagree.

A civil conspiracy-to-defraud claim, which Kristi asserts here, makes "fraud . . . a necessary predicate to a cause of action for conspiracy to defraud." *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005), *overruled on other grounds by Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). Therefore, that claim requires "(1) a conspiracy agreement, *i.e.*, a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another; (2) an overt act of fraud in furtherance of the conspiracy; and (3) resulting damages to the plaintiff." *Id.* at 74-75, 110 P.3d at 51 (footnote and internal quotation marks omitted). Fraud involves "a false representation," made with knowledge of or belief in its falsity, or "with an insufficient basis of information for" its veracity, "and with intent to induce the plaintiff to act." *Id.* at 75, 110 P.3d at 51.

Like the fraudulent-transfer claim, Kristi did not present sufficient admissible evidence to raise a genuine issue of material fact regarding the conspiracy-to-defraud claim. *See In re Cay Clubs*, 130 Nev. 920, 935, 340 P.3d 563, 573 (2014) (requiring "admissible evidence to show a genuine issue of material fact"). Even assuming a conspiratorial

agreement between Martin and Gianoli existed, she failed to point to admissible evidence that creates a genuine dispute of material fact that an overt act of fraud occurred, and damages resulted. For example, she relies on the mere fact that Martin and Gianoli amended their original transfer agreement, but she acknowledges that negotiations over the sale of Martin's business were ongoing, that Martin's business was in danger of failing at the time, and that Martin, along with Kristi and Gianoli, was personally liable for a previously defaulted loan related to Martin's and Gianoli's businesses. Given these circumstances, the fact of an amendment to the transfer agreement does not raise a genuine dispute of material fact of a false representation.

Kristi also claims that Martin received no real value in the form of the forgiven debt; however, the evidence she offers of "alleged[ ]," "suspicious," and "bogus" debt comes from her declaration in which she restates the same allegation. While a declaration may be sufficient evidence to overcome summary judgment, the declarant must possess personal knowledge of such facts to make the declaration admissible. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 134 ("[I]n order to defeat summary judgment, the nonmoving party must transcend the pleadings . . . by affidavit or other admissible evidence."). The declaration also states that Kristi's experts valued the entities relative to the debt; yet she did not provide the expert reports or valuations to the district court. Additionally, Kristi provided no evidence to rebut the validity or authenticity of a notarized assumption agreement included in one of the transfer agreements that provides the amount of purportedly "suspicious" debt owed by Martin. Nothing in the record gives rise to a genuine dispute of material fact that the debt

forgiveness between Martin and Gianoli constituted a fraudulent act to deprive Kristi of her community interest.

Finally, Kristi's evidence that Martin directed his counsel to convince Kristi to delay the divorce to give him and Gianoli more time to accomplish the conspiracy to defraud comes from her declaration in which she recounts that Martin's counsel told her "that a delay of the filing would be prudent." But this interaction does not permit the fact finder to draw any conclusion regarding Martin's involvement or motive in the conversation, let alone draw conclusions that Martin orchestrated a scheme with Gianoli to deprive Kristi of her community interest at divorce. In sum, Kristi provides no admissible evidence or specific facts to raise a genuine dispute of material fact as to the existence of fraud to overcome summary judgment on the conspiracy-to-defraud claim. Thus, we affirm the district court's grant of summary judgment, although on different grounds, without reaching the timeliness of the claim. *Cf. Saavedra-Sandoval*, 126 Nev. at 599, 245 P.3d at 1202 (affirming where "the district court reached the correct result," despite relying on different grounds).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

Cadish, J.

Cadish

Pickering, J.

Pickering

Gibbons, Sr.J.

Gibbons

[3]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Sandra A. Unsworth, District Judge, Family Division
Margaret M. Crowley, Settlement Judge
Robison, Sharp, Sullivan & Brust
Hoy Chrissinger Vallas, PC
Washoe District Court Clerk