

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YAN GUO, AN INDIVIDUAL,
Appellant,
vs.
HONGJUAN WANG, AN INDIVIDUAL;
DAVID FARR, AN INDIVIDUAL; AND
WFH ENTERPRISES, LLC,
Respondents.

No. 83402-COA

FILED

MAY 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Yan Guo appeals from a district court judgment following a bench trial in a contract action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Chief Judge.

In September 2013, Guo and respondent Hongjuan Wang entered into an agreement for Guo to purchase a 50 percent interest in Sisters Spa, a massage business that Wang purportedly owned, for \$40,000. The business relationship between the two parties began to break down shortly thereafter. Guo later learned that Wang's husband, respondent David Farr, and his company, respondent WFH Enterprises, LLC,¹ also had

¹Respondents filed their pro se appellate brief jointly. However, WFH, as an organization, cannot appear in pro se. *See Sunde v. Contel of Cal.*, 112 Nev. 541, 542, 915 P.2d 298, 299 (1996) ("Non-lawyers generally may not represent another person or an entity in a court of law."); *see also* NRAP 46A(b)(2) ("A corporation or other entity may not appear without counsel."); EDCR 7.42(b) ("A corporation may not appear in proper person.").

ownership interests in the spa.² Discord between Guo and Wang led to the parties running the spa separately on alternating months between June 2014 and July 2015, and ultimately culminated in Wang locking Guo out of the spa on August 1, 2015. Following numerous difficulties relating to the spa's business license and various stop-work orders from the City of Henderson, the spa closed in May 2016.

In July 2015, prior to being locked out of the business, Guo filed a complaint against Wang, Farr, and WFH, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, fraud and misrepresentation, and conversion. These claims stemmed from respondents allegedly failing to jointly share all profits and losses of the spa, unreasonably interfering with Guo's management duties, and denying Guo the income owed to her as a 50 percent owner in derogation of the parties' contract. Respondents filed counterclaims against Guo, alleging breach of contract, fraud and misrepresentation.

The case proceeded to a bench trial. The evidence adduced at trial revealed, in pertinent part, that the money earned from credit card purchases at the spa was deposited into a WFH-owned bank account controlled by Farr and used to pay the spa's expenses. Farr was not otherwise involved in running the spa. Wang received the cash payments at the spa, which she shared with Guo at the end of each month. Guo was not privy to the income earned by the spa each month, despite being a co-owner, and did not have access to the spa's business or accounting records.

²Farr later signed a notarized acknowledgment, "as the registered owner" of the spa, that he agreed to the sale "of the assets of the business between" Wang and Guo. The acknowledgement was to be effective as of September 1, 2013. Farr testified that he believed the acknowledgment was sufficient to demonstrate that his "hands were clean" of the spa.

Rather, the evidence demonstrated that Guo, who continued to work as a masseuse at the spa, kept her cash tips. Guo paid Wang a monthly fee for the spa's business license, which was in Farr's name. During the months Guo and Wang alternated running the spa, the credit card payments continued to go to the WFH bank account, but they each kept the cash payments and tips during their respective months. But in June 2015, while Guo was running the spa, she obtained her own credit card processing account and directed the credit card payments into her own bank account.

William Henry, the spa's tax preparer from 2013 through 2015, acknowledged that there were various discrepancies between the financial documents given to him to prepare tax returns and other financial records kept by the spa purportedly showing the spa's income. He concluded that, given the inconsistencies, he could not say how much money the spa made in any of the years he prepared the tax returns as he must have received inaccurate information. Moreover, Wang did not report cash receipts to Henry, and he had no way of knowing whether the spa had separate cash receipts. Additionally, while Henry believed the spa closed in 2015, the spa's financial records showed it had income in 2016, which had not been reported to him.

Following the conclusion of the trial, the district court entered a written order denying any relief to both Guo and respondents. Specifically, the court found, in relevant part, that Guo established her claims of breach of contract and breach of the implied covenant of good faith and fair dealing against Wang and WFH, as the evidence showed there was a valid contract between Wang and Guo, and an implied contract between Guo and WFH because it controlled the bank account for the spa and filed tax returns relating to the spa's income. It further concluded that Wang,

individually and on behalf of WFH, breached the contract with Guo by locking her out of the spa.

However, the court determined that it had “no way to assess [Guo’s] damages” because the financial records were “inaccurate at best, and possibly even intentional[] misrepresentations at worst.” The court noted that both Guo and Wang “benefitted from the contractual agreement, at least for a period of time, with both working, and both earning income from the spa” and, to an extent, jointly shared in profits and losses. However, the evidence was not clear regarding the spa’s income, how the income was split, if the income was split, and how the spa’s expenses were paid. Nor did the evidence show the value of the business at the time Guo was locked out, the spa’s income and expenses each week, month, or year, or the amount of income Guo earned. Further, the district court did not “believe that refunding [Guo] her \$40,000 investment would be equitable, because she benefitted from that investment for a period of time,” and while the parties agreed Guo’s investment represented 50 percent of the value of the business in 2013, it did not necessarily represent 50 percent of the value of the spa in 2015. Moreover, the spa had no value at the time of trial because it had closed in 2016. The court therefore declined to award damages to Guo, noting that she failed to meet her burden of proof with respect to the amount of damages, and that it “cannot guess or speculate what [Guo’s] damages were, if any.”³ This appeal followed.

³With respect to Guo’s claims against Farr, the district court found that she failed to prove breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud and misrepresentation. It noted that there was no contract between Guo and Farr, and Farr was unknown to Guo initially and therefore could not have made any representations on which Guo could have relied. The court’s order appears to find that Guo

On appeal, Guo contends that the district court erred by denying her an award of damages on her claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

Initially, we note that Guo has failed to make any cogent argument regarding the district court's denial of damages. Guo appears to argue that she is entitled to her \$40,000 investment as damages because that amount was "the baseline of her breach of contract damages claim" and "represent[s] a finite and distinct monetary damage claim, which was well supported by the trial evidence." However, she does not provide any specific argument explaining how the district court erred when it found (1) the evidence was insufficient to establish an amount of damages to assess because she failed to show the spa's value or income and (2) that she was not entitled to her \$40,000 investment back because she benefitted from the investment during the years she co-owned and operated the business. Rather, she seems to assume that her initial investment entitles her to recoup that amount without demonstrating the income or value of the spa in the years following her investment. Guo conflates the amount she paid as her initial investment with the amount she would be entitled to recover as a 50 percent owner of the spa based on the spa's earnings and value. *Cf.* NRS 87.4333(2) ("Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses

proved conversion against Farr because the evidence showed he controlled the WFH bank account, which received income from the spa, and Guo did not have access to the account. However, the court found that Guo failed to establish the amount to which she would have been entitled that was wrongfully withheld or converted by Farr.

The court also determined that respondents failed to prove any of their counterclaims against Guo.

in proportion to the partner's share of the profits.”). Because Guo has not presented a cogent argument regarding how the district court erred in finding she failed to prove damages and instead summarily assumes she was entitled to receive the amount of her full investment as damages, we need not consider her argument on this point. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued).

Moreover, Guo has not demonstrated that the district court erred in finding that she failed to meet her burden in proving the amount of damages. In breach-of-contract actions, a plaintiff must prove the amount of damages. *See Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989). “[A] party seeking damages has the burden of providing the court with an evidentiary basis upon which it may properly determine the amount of damages.” *Frantz v. Johnson*, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000). Damages are not required to be proven with mathematical exactitude, and “the mere fact that some uncertainty exists as to the actual amount of damages sustained will not preclude recovery.” *Id.* We review the district court's factual findings for an abuse of discretion, so long as they are not clearly wrong and are supported by substantial evidence. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004). Substantial evidence may be shown inferentially if certain evidence is absent. *Wright v. State, Dep't of Motor Vehicles*, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005).

In this case, the district court's determination that Guo failed to prove the amount of her damages was supported by substantial evidence. The evidence at trial established that Guo paid Wang an initial \$40,000

investment to be a 50 percent owner of the spa. But as noted above, Guo has offered no authority or cogent argument demonstrating that she was entitled to the return of her investment as damages. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

With regard to any other damage amounts, the spa's tax preparer testified as to certain aspects of the spa's financials, but he further stated that there was no way to know what income the spa earned at any given time due to the discrepancy between the spa's financial records and what was reported on the spa's tax returns. As a result, the spa's tax preparer admitted that some of the documents must have been incorrect, and he could not say with any certainty how much money the spa made in any of the years that Wang and Guo were co-owners. Beyond this testimony, none of the actual financial records are included in the record on appeal. Thus, we presume they support the district court's determination that Guo had failed to prove the amount of damages. *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.").

Under these circumstances, we conclude that Guo failed to show that the district court abused its discretion in finding she failed to prove the amount of damages. *See Mort Wallin*, 105 Nev. at 857, 784 P.2d at 955 (noting that claimants must prove both the fact and the amount of damages and that "there must be an evidentiary basis for determining a reasonably

accurate amount of damages”).⁴ Accordingly, because Guo failed to cogently argue her claim, and the record demonstrates the district court did not abuse its discretion in finding she did not meet her burden of proving the amount of damages, we necessarily

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jerry A. Wiese, Chief Judge
Michael I. Gowdey
David Farr
Hongjuan Wang
Eighth District Court Clerk

⁴Respondents refer to themselves as “cross-appellants” on appeal and summarily ask this court to reverse the district court’s order denying them attorney fees and costs. This issue is not properly before us, however, as respondents did not separately appeal from that determination. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“A post-judgment order awarding attorney’s fees and/or costs may be appealed as a special order made after final judgment.”); *see also Cashman Equip. Co. v. W. Edna Assocs.*, 132 Nev. 689, 693 n.2, 380 P.3d 844, 847 n.2 (2016) (rejecting respondents’ attempt to obtain affirmative relief in an answering brief where they failed to file a notice of appeal from the relevant order).