IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIMMY L. WILSON; AND TWANA HATCHER,
Appellants,
vs.
TYRONE SPREWELL; AND REEC ENTERPRISES, LLC.,
Respondents.

No. 85374-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Jimmy L. Wilson and Twana Hatcher appeal from a district court judgment in a residential real property contract dispute. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

In October 2016, respondent Tyrone Sprewell entered into a Residential Purchase Agreement (RPA) to sell a residential property to Wilson and Hatcher (collectively, "Wilson") for $335,000.[1] Upon signing the RPA, Wilson began to occupy the property. Under RPA's original terms, escrow was scheduled to close on November 1, 2016, but Wilson failed to open escrow or make the agreed-upon down payment. An addendum was thereafter entered that extended the escrow date and modified the payment terms. Under the addendum, Wilson agreed to satisfy the property's existing mortgage amount of $258,000 as well as pay the remainder of the purchase price, including fees and penalties, approximately $81,000, as a balloon lump sum to Sprewell by the new close of escrow on October 20, 2018. By this date, Wilson had only paid approximately $40,000 of the lump sum amount and failed to satisfy Sprewell's existing mortgage. However, Wilson continued to occupy the property.

[1]We recount the facts only as necessary for our disposition.

In January 2019, Sprewell transferred a partial interest in the property to respondent REEC Enterprises, LLC (REEC). REEC obtained the entire property interest in September 2019.

A month after transferring the partial interest in the property to REEC, in February 2019, Sprewell filed an action against Wilson seeking, among other things, possession of the property through a writ of restitution/unlawful detainer, and declaratory relief. In response, Wilson filed a motion to dismiss for failure to participate in prelitigation mediation as required by the RPA. Instead of immediately dismissing Sprewell's complaint, the court stayed the proceedings to allow the parties to mediate.

The RPA required mediation through the Greater Las Vegas Association of Realtors (GLVAR). However, GLVAR refused to host the mediation because the parties to the contract were not licensed real estate agents. At a status check in district court, Wilson conceded that if the parties had attempted to mediate before litigation and been rejected by GLVAR, the outcome would have been the same and he would not have sought dismissal. The district court subsequently found that GLVAR's refusal to host the mediation rendered the prelitigation mediation clause a contractual impossibility, denied Wilson's motion to dismiss, and ordered Wilson to file an answer.

Two years later, in May 2021, Wilson filed a motion for judgment on the pleadings, which again sought to dismiss the case for failure to mediate prior to initiating litigation. In response, Sprewell filed an opposition and countermotion for attorney fees pursuant to EDCR 7.60(b)(1) or (3) because Wilson's motion was duplicative of his prior motion to dismiss, which had already been adjudicated. The district court denied Wilson's motion and summarily granted Sprewell's countermotion for sanctions, awarding Sprewell attorney fees of $2,150.

Less than a month later, Wilson filed another motion for judgment on the pleadings, this time seeking an order quieting title in his favor under a theory of equitable conversion. Sprewell filed an opposition and another countermotion for sanctions. The district court again denied Wilson's motion and summarily granted Sprewell's countermotion, awarding Sprewell attorney fees of $5,000.

The parties stipulated to a bench trial, which took place in August 2022. At trial, Wilson asserted counterclaims for slander of title, breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory and injunctive relief—quiet title, and fraudulent conveyance. In September 2022, the district court entered its findings of fact, conclusions of law and judgment. The court found in favor of Sprewell on all claims and rejected all of Wilson's counterclaims. The court determined that Sprewell transferred his interest in the property to REEC via a recorded quitclaim deed and further found that Wilson materially breached the RPA, had no interest in the property, and had no right to quiet title. Wilson was ordered to vacate the property.

Wilson timely appealed, and this court thereafter granted stays of execution pending resolution of the appeal. In November 2022, the Nevada Supreme Court directed that REEC be joined as a respondent to this appeal.

On appeal, Wilson contends that the district court erred when it (1) denied his motion to dismiss for failure to mediate before litigation, (2) twice sanctioned him without articulating any basis for the sanction awards, (3) found that he had no interest in the property under the doctrine of equitable conversion, (4) denied his request to quiet title, and (5) granted Sprewell a writ of restitution and declaratory relief. We agree that the district court made insufficient factual findings to support its orders sanctioning Wilson, and so we reverse those sanction awards and remand for

further factual findings. However, Wilson's remaining contentions are without merit and, thus, we otherwise affirm the district court.

First, Wilson argues the district court erred when it stayed the proceedings for the parties to mediate rather than dismissing the action, and thereafter denied his motion to dismiss for Sprewell's failure to mediate. He relies on *MB America, Inc. v. Alaska Pacific Leasing Co.*, 132 Nev. 78, 82, 367 P.3d 1286, 1288 (2016), to contend that prelitigation mediation clauses are an "an enforceable condition precedent to litigation," and that dismissal, rather than a stay, was the only permissible remedy in this case. Wilson acknowledges the district court's finding that mediation through GLVAR was impossible.[2] Nevertheless, he contends that the district court acted "backwards" by staying the proceedings to mediate *after* litigation had already commenced.

Wilson's reliance on *MB America* is misplaced. The primary issue in *MB America* was "whether prelitigation mediation provisions in a contract *can* constitute a condition precedent to litigation." 132 Nev. at 81,

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[2]Wilson argues that the RPA's mediation clause was *not* contractually impossible because GLVAR's refusal to host mediation was foreseeable. In support, he cites *Nebaco, Inc. v. Riverview Realty Co.*, 87 Nev. 55, 57, 482 P.2d 305, 307 (1971), where the Nevada Supreme Court stated that "the defense of impossibility is available to a promissor where his performance is made impossible or highly impractical by the occurrence of unforeseen contingencies," but if the contingency "is one which the promissor should have foreseen, and for which he should have provided, this defense is unavailable to him." However, Wilson concedes in his reply brief that "no party was evidently aware that the GLVAR would refuse to host mediation." As a result, Wilson cannot show that the district court's finding of impossibility was clearly erroneous. *See May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005) ("[T]he question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence.").

367 P.3d at 1288 (emphasis added). After determining that they could, the supreme court held that the specific mediation provision in the parties' contract *did* constitute an enforceable condition precedent to litigation. *Id.* Because there was no dispute that the parties had failed to mediate before filing suit, and because MBA did not establish that mediation would have been futile, the supreme court affirmed the district court's grant of summary judgment. *Id.* at 83-86, 367 P.3d at 1289-91. Additionally, the supreme court held that the district court did not err when it denied MBA's request to stay the litigation to enable the parties to mediate. *Id.* at 88, 367 P.3d at 1292.

Unlike *MB America*, the mediation provision in this case was deemed invalid due to impossibility, and Wilson does not demonstrate that the district court's finding of impossibility was clearly erroneous. *See May*, 121 Nev. at 672-73, 119 P.3d at 1257. In addition, contrary to Wilson's claim, *MB America* does not stand for the proposition that a district court is *required* to immediately dismiss a complaint for noncompliance with a prelitigation mediation provision, nor does it stand for the proposition that a district court *may not* grant a stay of litigation to allow parties to mediate in compliance with such a provision. The decision to grant or deny a stay is generally within the discretion of the trial court. *See Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 640, 289 P.3d 201, 205 (2012) (reviewing an order denying a motion to stay for an abuse of discretion). Wilson fails to identify any legal authority showing that the district court abused its discretion by issuing a stay in lieu of dismissal. *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 or lacks support of relevant authority). Furthermore, Wilson conceded below that if the parties had attempted prelitigation mediation and had been rejected by GLVAR, the outcome would

have been the same, and he would not have sought dismissal. Thus, even if the district court erred by granting a stay, any such error was harmless. *Cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). Therefore, Wilson is not entitled to relief on this claim.

Second, Wilson argues the district court abused its discretion when it twice sanctioned him by ordering him to pay attorney fees, first in the amount of $2,150 and a second time for $5,000, without articulating any basis.[3] In both orders, the district court cited "E.D.C.R. 7.60(b)(1) and/or (3)" as a basis for the fee awards, but otherwise made no findings.

An award of attorney fees, including fees when awarded as a sanction, is reviewed for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005); *Rivero v. Rivero*, 125 Nev. 410, 440, 216 P.3d 213, 234 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022). However, "deference is not owed to legal error" or findings so conclusory that they mask legal error. *Davis v. Ewalfeo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). A district court may award attorney fees as a sanction under EDCR 7.60(b)(3) where a party "[s]o multiplies the proceedings in a case as to increase the costs unreasonably and vexatiously." Likewise, a district court may sanction a party under EDCR 7.60(b)(1) if "a party brought a frivolous claim," provided the court determines there was no "credible evidence or reasonable basis for the claim

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[3]REEC responds that Wilson previously challenged the first sanction order in a writ petition to this court, which was denied. *See Wilson v. Eighth Judicial Dist. Court*, No. 84319-COA, 2022 WL 855012 (Nev. Ct. App. March 22, 2022) (Order Denying Petition for Writ of Mandamus). However, this court denied the writ because Wilson had a plain, speedy and adequate remedy at law through a direct appeal from a final judgment, and therefore Wilson's prior claims were not addressed on the merits. *See id.*

at the time of filing." *Rivero*, 125 Nev. at 441, 216 P.3d at 234. "Although a district court has discretion to award attorney fees as a sanction, there must be evidence supporting the district court's finding that the claim or defense was unreasonable or brought to harass." *Id.*

In *Rivero v. Rivero*, for example, the Nevada Supreme Court held a sanction was an abuse of discretion because "the district court did not explain in its order the basis for awarding Mr. Rivero attorney fees and only noted in its summary order that Ms. Rivero's motion to disqualify the district court judge was without merit." *Id.* Similarly, here, the district court did not explain in its order the basis for awarding Sprewell attorney fees under EDCR 7.60(b), and summarily denied Wilson's motions for judgment on the pleadings without any further factual findings to support the sanction awards. Because the district court failed to make sufficient findings, we cannot determine whether sanctions were appropriate. We therefore reverse both sanction awards and remand for the district court to make further factual findings. *See Davis*, 131 Nev. at 452, 352 P.3d at 1143 (stating that if there are no facts explaining how the district court reached its conclusions, this court cannot determine whether those conclusions were "made for appropriate legal reasons").

Third, Wilson argues the district court erred when it found that no equitable conversion had occurred. He contends that because the RPA was for the sale of property, Sprewell "sold the property" to him and thereby gave him an equitable interest in the property. However, Wilson does not address his breach or any other factors that were discussed by the district court.

As the district court found, because Wilson failed to perform material terms under the RPA, he is not entitled to an equitable interest in the property. "An equitable conversion occurs when a contract for the sale of

real property becomes binding upon the parties. The purchaser is deemed to be the equitable owner of the land and the seller is considered to be the owner of the purchase price." *Harrison v. Rice*, 89 Nev. 180, 183, 510 P.2d 633, 635 (1973). The policy underlying equitable conversion is "the maxim that equity considers as done that which was agreed to be done." *Id.*

However, when a party to a contract materially breaches its terms, the breaching party cannot then seek to enforce the contract because the breach "discharges the non-breaching party's duty to perform." *Cain v. Price*, 134 Nev. 193, 196, 415 P.3d 25, 29 (2018) (citing Restatement (Second) of Contracts § 237 (Am. Law. Inst. 1981)). Because the district court found that Wilson breached the material terms of the RPA—a factual finding he does not challenge on appeal—Wilson did not do "that which was agreed to be done" and cannot benefit from his breach. *Harrison*, 89 Nev. at 183, 510 P.2d at 635. Indeed, permitting Wilson to do so would be inequitable. *See Fed. Mining & Eng'g Co. v. Pollak*, 59 Nev. 145, 157-58, 85 P.2d 1008, 1012 (1939) ("[I]t is a well settled rule of law that one cannot accept the benefits derived from a transaction and repudiate any burden connected with it. . . . The principle rests upon the equitable ground that no man can be permitted to claim inconsistent rights in regard to the same subject."); *Alexander v. Winters*, 23 Nev. 475, 486, 49 P. 116, 119 (1897) ("A person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit of which it confers, he shall likewise take the obligations or bear the onus which it imposes. No person can accept and reject the same instrument."). Therefore, the district court did not err in rejecting Wilson's claim for equitable conversion.

Fourth, Wilson argues that because there was an equitable conversion, the district court abused its discretion when it did not quiet title in his favor. As there was no equitable conversion, the district court did not

abuse its discretion when it declined to quiet title. We also note that Wilson fails to challenge the district court's factual finding that Wilson could not prove his "superiority of title" in the property, and therefore his argument is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).[4]

Fifth, Wilson argues the district court erred when it granted Sprewell's claims for a writ of restitution/unlawful detainer and declaratory relief. He asserts that both the writ of restitution and declaratory relief are "statutory remedies," not "causes of action." He also contends that unlawful detainer is strictly limited to landlords and tenants, and an action for declaratory relief cannot exist without "an independent cause of action." However, Wilson's claims are belied by the plain language of the relevant statutes. *See generally Smith v. Zilverberg*, 137 Nev. 65, 72, 481 P.3d 1222, 1230 (2021) (stating that an unambiguous statute's plain language will be enforced as written without resorting to the rules of construction).

A writ of restitution is specifically provided for in NRS 40.215-.425, addressing unlawful detainer, and the statutes are replete with references to the "action" brought under these statutes. *See, e.g.*, NRS 40.300(2) ("The summons shall be issued and served as in other cases, but the court, judge or justice of the peace may shorten the time within which

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[4]Wilson argues in his reply brief that REEC did not have an ownership interest in the property. However, because Wilson made this argument for the first time in reply, we decline to address it. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (explaining that this court need not consider issues raised for the first time in an appellant's reply brief).

the defendant shall be required to appear and defend the action."). Further, the pertinent statutes' plain language refers to both "tenants" and unauthorized "occupants." *See* NRS 40.280(1)(a) (requiring service of notices "[b]y delivering a copy to the tenant personally") and 40.280(2)(a) (requiring service of notices "by delivering a copy to the unlawful or unauthorized occupant personally, in the presence of a witness").

Declaratory relief is also provided for in NRS 30.010-.160, known as Nevada's Uniform Declaratory Judgments Act. NRS 30.030 states, in pertinent part, that courts "shall have power to declare rights, status and other legal relations *whether or not further relief is or could be claimed.* No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for." (Emphasis added.) Contrary to Wilson's interpretation, the statute expressly permits an action for declaratory relief and does not require any independent causes of action. Therefore, the district court did not err in granting Sprewell a writ of restitution/unlawful detainer and declaratory relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with the order.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Hatfield & Associates, Ltd.
Hong & Hong
Eighth District Court Clerk