

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROLD KNOLES,
Appellant,
vs.
ANTHONY CAPEZIO,
Respondent.

No. 85899

FILED

AUG 17 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a default judgment. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge. Appellant Jerold Knoles challenges the default judgment he obtained against respondent Anthony Capezio, arguing that he was entitled to a larger damages award.¹

Knoles first argues that the district court erred by requiring a prove-up hearing on the requested damages. In this, Knoles asserts that the district court clerk was required to enter judgment under NRCP 55(b)(1). Our review is de novo. *See Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015) (reviewing issues pertaining to the Nevada Rules of Civil Procedure de novo).

NRCP 55(b)(1) provides that the district court clerk “must” enter a default judgment for a plaintiff’s requested damages against a defendant who has been defaulted if the “claim is for a sum certain or a sum that can be made certain by computation.” “In all other cases, the party must apply to the court for a default judgment,” and the district court may require a prove-up hearing to determine damages if needed. NRCP 55(b)(2).

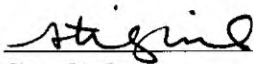
¹Having considered the pro se brief filed by appellant, we conclude that a response is not necessary, NRAP 46A(c), and that oral argument is not warranted, NRAP 34(f)(3). This appeal therefore has been decided based on the pro se brief and the record. *Id.*


We conclude that the requested damages here did not fall under NRCP 55(b)(1). Knoles did not seek the contract amount as damages; rather, Knoles sought damages to compensate him for expenses he allegedly incurred on Capezio's behalf. *See Combs v. Coal & Min. Mgmt. Servs., Inc.*, 105 F.R.D. 472, 474 (D.D.C. 1984) (listing examples of damages that would constitute "sum certain" amounts, or those that can be made certain by computation). While Knoles may be certain of the sum Capezio owes, Knoles' claimed damages required a judgment call which only the district court could make. *See CSXT Intermodal, Inc. v. Mercury Cartage, LLC*, 271 F.R.D. 400, 401 (D. Me. 2010) ("Simply because a plaintiff is certain of the sum does not make its damage claim a 'sum certain' within the meaning of Rule 55(b)(1)."). As such, the district court clerk lacked authority to enter a judgment under NRCP 55(b)(1). *See, e.g., Combs*, 105 F.R.D. at 475 (holding that a clerk of the court lacks authority to grant relief requiring a judgment call, such as the reasonableness of attorney fees); C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2683, at 416 (2d ed. 1983) (explaining that the substantively identical federal analog to NRCP 55(b)(1) is limited to where a clerk's actions are rendered ministerial, since "[s]ound policy dictates that the clerk should not be invested with discretionary power"). Thus, the district court did not err by conducting a prove-up hearing consistent with NRCP 55(b)(2).

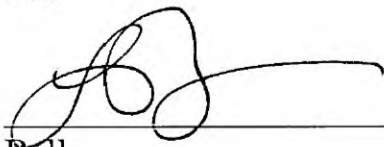
Knoles also challenges the amount of damages awarded in the default judgment, complaining that the district court did not tell Knoles how the court arrived at the amount of \$26,625.49 when his claimed damages totaled \$49,924.42. But Knoles did not request or provide the relevant hearing transcripts, the minutes of which reflect that the district court delved into its concerns with Knoles' requested damages. *See NRAP*

9(b) (setting forth a pro se appellant's duty to request all necessary transcripts in a civil appeal). And because Knoles failed to request or otherwise provide the transcripts of those hearings, we necessarily presume that they support the district court's ultimate findings. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 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."). We therefore

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Stiglich

 _____, J.
Lee

 _____, J.
Bell

cc: Hon. Christy L. Craig, District Judge
Jerold Knoles
Anthony Capezio
Eighth District Court Clerk