IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IAN CHRISTOPHERSON, Appellant, vs. CHRIS SULLIVAN, ESQ, A/K/A CHRISTOPHER D. SULLIVAN, Respondent.	No. 85452-COA FILED MAR 22 2024 ELIZABETH A. BROWN CLERK OF SUPREME COURT BY DEPUTY CLERK

ORDER OF AFFIRMANCE

Ian Christopherson appeals from a district court order granting summary judgment. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Respondent Christopher D. Sullivan (Sullivan), an attorney and friend of Christopherson for many years gave him the opportunity to work as a law clerk or paralegal at his firm beginning in 2015 through early 2017.[1] Sullivan orally agreed to pay Christopherson a minimum of $500 per week for the work he performed, not to exceed 20 hours per week. In February 2016, Sullivan was retained by two clients for representation in a dispute involving the separation of family businesses (hereinafter the Becker matter). Purportedly, in 2017, Chris Sullivan Law Firm LLC (hereinafter Sullivan LLC) was able to enforce an attorney's lien for legal services rendered in the Becker matter for over $300,000. By early 2017, Christopherson claimed that Sullivan failed to pay him wages that he was owed in some unspecified amount related to work he had performed in the Becker matter. At or near this time, Sullivan terminated Christopherson.

[1]We do not recount the facts except as necessary to our disposition.

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Based on the foregoing, Christopherson filed a civil complaint for wages due, unjust enrichment and fraudulent inducement. Specifically, Christopherson alleged that Sullivan was unjustly enriched by receiving over $300,000 in the Becker matter, pursuant to the adjudicated attorney lien, because he failed to pay Christopherson—in some unspecified amount—for the work he performed in the Becker matter. According to the billing records submitted with the lien, Christopherson's services were billed at a rate of $150 per hour and a total amount of over $30,000 in law clerk billing was attributed to his work.

In April 2022, Sullivan filed a motion to dismiss under NRCP 12(b)(5) alleging that Chrisopherson failed to sue the proper party, Sullivan LLC, to collect any past due wages owed. Further, Sullivan argued that Christopherson failed to make a claim to pierce the corporate veil for Sullivan to be held individually liable. Sullivan also argued that, even if Christopherson properly sued him as the correct party, Christopherson failed to produce any evidence of wages that were owed and not paid. In his response to Sullivan's motion, Christopherson confirmed that he was only pursuing his unjust enrichment claim for the work he did in the Becker matter. He also asserted that Sullivan did not provide evidence that he was operating as an LLC, and that he was employed by Sullivan, individually. Christopherson argued that Sullivan was unjustly enriched by retaining over $30,000 he received for Christopherson's billings in the Becker matter and presumedly not compensating him for the work he performed.

After a hearing, the district court entered an order granting summary judgment in favor of Sullivan on two grounds.[2] The district court found that there was no genuine dispute as to Sullivan LLC's status as an LLC, and that any unjust enrichment claim involving the proceeds recovered from the lien in the Becker matter would need to be brought against Sullivan LLC and not against Sullivan, individually. The court also found that Christopherson failed to cite any law that would support an unjust enrichment claim against Sullivan. Thus, the court granted summary judgment. This appeal followed.

On appeal, Christopherson alleges that the district court erred in granting Sullivan's motion where there was a factual dispute raised in the pleadings as to whether he worked for Sullivan individually or for Sullivan LLC; that Christopherson established a prima facie case for unjust enrichment precluding summary judgment; and that the district court erred in granting summary judgment on the basis of Sullivan's unpled affirmative defense that Christopherson had failed to name Sullivan LLC as a necessary party.[3] Conversely, Sullivan argues that Christopherson did not

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[2]We note that Sullivan filed a motion to dismiss Christopherson's complaint, but the district court properly treated the motion as one for summary judgment. *See* NRCP 12(d) ("If, on a motion under Rule 12(b)(5) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.").

[3]Christopherson's argument regarding the unpled affirmative defense is raised for the first time on appeal, and, accordingly, we decline to address it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Nevertheless, we note that the district court may consider an unpled affirmative defense when considering a motion for summary judgment. *See Res. Grp., LLC v. Nev. Ass'n Servs., Inc.*, 135 Nev. 48, 53 n.5, 437 P.3d 154,

properly amend his complaint to name Sullivan LLC as a party, and thus, Christopherson was not entitled to seek compensation received by the LLC pursuant to the attorney lien. Sullivan also asserts that even if Christopherson named him as the proper party, he failed to provide any evidence of non-payment for his work to support a claim for unjust enrichment against either himself or Sullivan LLC, and therefore summary judgment was appropriate.

We review a district court order granting summary judgment de novo. *Wood v. Safeway*, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* All evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

LLCs or limited-liability companies are business entities created "to provide a corporate-styled liability shield with pass-through tax benefits of a partnership." *Weddell v. H2O, Inc.*, 128 Nev. 94, 102, 271 P.3d 743, 748 (2012) (citing to *White v. Longley*, 244 P.3d 753, 760 (Mont. 2010)). Typically, members of an LLC may not be held personally liable for the debts or liabilities of the company unless they acted as the LLC's alter ego.

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159 n.5 (2019) (noting that the court may consider an unpled affirmative defense "if fairness so dictates and prejudice will not follow" (internal quotation marks and citation omitted)); *see also* 5 Charles Alan Wright, Arthur R. Miller & A. Benjamin Spencer, *Federal Practice & Procedure* § 1278, at 700-03 (4th ed. 2021) ("[T]he substance of many unpleaded Rule 8(c) affirmative defenses may be asserted by pretrial motions, particularly in the absence of any showing of prejudice to the opposing party and assuming it has had an opportunity to respond.").

NRS 86.371; NRS 78.747 ("[N]o person other than a corporation is individually liable for a debt or liability of the corporation unless the person acts as the alter ego of the corporation.").[4] NRS 86.381 provides that "[a] member of a limited-liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member's right against or liability to the company."

In this case, Christopherson fails to cogently argue that he did not need to file his complaint against Sullivan LLC to recover lien proceeds in the Becker matter. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that we need not consider arguments that the parties fail to cogently argue). The record supports that Sullivan's law firm was a legal LLC under Nevada law, as evidenced by the Nevada Secretary of State filing that Christopherson attached in response to Sullivan's motion to dismiss.[5] Additionally, it is

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[4]The requirements for finding alter ego and piercing the corporate veil are: "(1) The corporation must be influenced and governed by the person asserted to be its alter ego[;] (2) There must be such unity of interest and ownership that one is inseparable from the other; and (3) The facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." *Ecklund v. Nev. Wholesale Lumber Co.*, 93 Nev. 196, 197, 562 P.2d 479, 479-80 (1977) (quoting *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957)). We note that Christopherson did not plead alter ego before the district court.

[5]We note that Christopherson submitted the information from the Nevada Secretary of State to argue that Sullivan LLC's status was revoked and reinstated during the time of the Becker matter. However, this argument is unavailing, as NRS 86.276(5), provides that reinstatement retroactively restores the entity's right to transact business; it is "as if such right had at all times remained in full force and effect."

undisputed that the lien obtained in the Becker matter was filed on behalf of Sullivan LLC, and not on behalf of Sullivan, individually. Thus, for Christopherson to assert unjust enrichment based on lien proceeds received for the work he performed in the Becker matter, Christopherson was required to name Sullivan LLC in the lawsuit, which he failed to do. *See* NRS 86.371.

Even if Christopherson was entitled to pursue his unjust enrichment claim against Sullivan, individually, Christopherson failed to satisfy the legal requirements of unjust enrichment.[6] "Whether a claimant has been unjustly enriched is a mixed question of law and fact." *Halcyon Silver, LLC v. Evelynmoe,* No. 84299-COA, 2023 WL 2661524, at*7 (Nev. Ct. App. March 24, 2023) (Order Affirming in Part, Reversing in Part, and Remanding) (quoting *Desert Miriah, Inc. v. B & L Auto, Inc.*, 12 P.3d 580, 582 (Utah 2000)). Thus, we review whether substantial evidence supports a district court's unjust enrichment determination. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 377, 283 P.3d 250, 254 (2012); *see also Sands Aviation, LLC v. AIS-Int'l, Ltd.*, Nos. 73522 & 74114, 2019 WL 1422863, at *4 (Nev. March 28, 2019) (Order Affirming in Part and Reversing in Part). Unjust enrichment exists when (1) the plaintiff confers a benefit on the defendant, (2) the defendant appreciates the benefit, and

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[6]Although Sullivan asserts that the parties had an express agreement that Christopherson would be paid $500 per week for the work he performed, which could preclude Christopherson from asserting an unjust enrichment claim, this preclusion applies only to express, written contracts. *See Leasepartners Corp. v. Robert L. Brooks Tr.*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (noting that a claim for unjust enrichment is unavailable when there is an express, written contract.). Here, the parties only had an oral agreement that Christopherson would be paid $500 per week for the work he performed, not to exceed 20 hours per week.

(3) there is acceptance and retention by the defendant of the benefit under circumstances where it would be inequitable for him to retain it without payment. *Id.* at 381, 283 P.3d at 257.

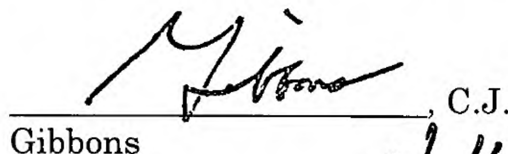
The Nevada Supreme Court has previously held that an appellant could not succeed on an unjust enrichment claim where the appellant did not provide any evidence of the reasonable market value of her services because, without such information, she could not show that the value of her services exceeded the compensation she received. *See Ewing v. Sargent*, 87 Nev. 74, 81, 482 P.2d 819, 823 (1971); *see also Decesare v. Tirrell*, No. 71193, 2019 WL 3470758, at *2 (Nev. July 24, 2019) (Order of Affirmance) (determining that the appellant was not entitled to relief for unjust enrichment for 50 percent of the business's profits where she had received substantial monthly payments during the relevant period).

In this case, Christopherson failed to establish the value of his services, for which he contends he was not paid, and which conferred a benefit on Sullivan. He merely pointed to the billing records in the Becker matter to suggest that Sullivan failed to fairly compensate him. However, Christopherson failed to specifically prove what compensation he was entitled to and did not receive. For example, Christopherson failed to cogently argue which specific weeks he had worked on the Becker matter and was inequitably compensated. *See Certified Fire Prot., Inc.*, 128 Nev. at 381, 283 P.3d at 257 (unjust enrichment occurs where "retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof"). And Christopherson failed to produce evidence, an affidavit or otherwise, to support his unjust enrichment claim, or at least to suggest that a genuine dispute remained as to the value of the work he performed

versus the compensation he received such that an unjust benefit was conferred on Sullivan. *See Ewing,* 87 Nev. at 482, P.2d at 823. This is particularly problematic given that discovery had closed, and trial was a week away at the time the district court ruled on Sullivan's motion. *See Wood*, 121 Nev. at 732, 121 P.3d at 1031 (explaining that while pleadings and evidence "must be construed in a light most favorable to the nonmoving party," the nonmoving party cannot rely on speculation or conjecture to avoid summary judgment being entered against it but instead "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine [dispute] for trial" (quoting *Bulbman, Inc. v. Nev. Bell,* 108 Nev. 105, 110, 825 P.2d 588, 591 (1992))). Thus, we conclude that summary judgment was also appropriate because Christopherson failed to produce evidence of unjust enrichment to support his claim or demonstrate that a genuine dispute of material fact remained as to any unjust benefit conferred on Sullivan in advance of trial.

As we see no basis for reversal of the district court's grant of summary judgment, we

ORDER the judgment of the district court AFFIRMED.[7]



_______________, C.J.
Gibbons

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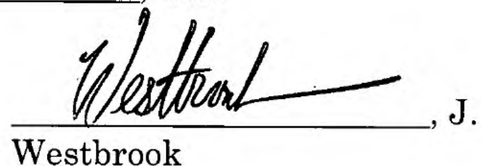

_______________, J.
Westbrook

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[7]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Crystal Eller, District Judge
Ara H. Shirinian, Settlement Judge
Christopherson Law Offices
Chris Sullivan Law Firm
Eighth District Court Clerk