

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF: THE
RODRIGUEZ LIVING TRUST DATED
FEBRUARY 9, 2001, RESTATED
SEPTEMBER 29, 2017

NIKI RODRIGUEZ,

Appellant,

vs.

TIMOTHY WILLIAMS, TRUSTEE OF
THE RODRIGUEZ LIVING TRUST
DATED FEBRUARY 9, 2001,
RESTATED SEPTEMBER 29, 2017,
Respondent.

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No. 87830-COA

FILED

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ELIZABETH A. BROWN
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BY  DEPUTY CLERK

No. 88256-COA

ORDER OF AFFIRMANCE

Niki Rodriguez appeals from a district court order granting summary judgment in a trust matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.¹

¹The Honorable Bonnie A. Bulla, Chief Judge, did not participate in the decision in this matter.

Dorothy and Herbert Rodriguez created the Rodriguez living trust, which was restated in 2017 (the 2017 Trust) and was meant as an estate plan and to provide for them during their later stages of life. After their deaths, the property in the trust was to be distributed equally among their children per stirpes. They had four children, two of which are still alive: Angela Rodriguez and Niki Rodriguez. Additionally, they had a grandchild named Nicholas who was the son of one of the deceased children and the nephew to both Niki and Angela.

In the 2017 Trust, Herbert and Dorothy designated Angela's husband, respondent Timothy Williams, as the co-trustee or alternatively the successor trustee (successor trustee). They also designated Williams as an alternative agent to Herbert, granting him generalized, durable powers of attorney, which included the power to represent them in litigation. However, the durable powers of attorney did not give Herbert or Williams the explicit right to amend, revoke, or terminate an inter vivos trust per NRS 162A.450(1)(a), which restricts those powers unless specifically authorized. Furthermore, the 2017 Trust had a specific provision stating both Dorothy and Herbert must unanimously approve any modification, revocation, or termination of the trust.

Dorothy began showing symptoms of Alzheimer's related dementia in 2017, which grew worse in 2018. On September 30, 2018, she was admitted to the hospital for a broken femur, and the doctors noted her advanced dementia symptoms and prescribed her anti-psychotic medication. She was transitioned to a care facility after her discharge from the hospital, and she and Herbert were subsequently transferred to an assisted-living facility. During their stay, the facility recommended that Dorothy be moved to a facility specializing in memory care.

In March of 2019, Nicholas accompanied Herbert and Dorothy to a meeting with their estate-planning attorney, and the first modification to the 2017 Trust was executed, designating Nicholas as the successor trustee rather than Williams, and Niki as the alternate successor trustee. Three months later, a second amendment to the 2017 Trust was created, designating Niki as the successor trustee and Nicholas as the alternate successor trustee. Then in October 2019, Niki relocated Herbert and Dorothy to Georgia to live near him without notifying Angela or Williams. Through his newly granted powers of attorney, Niki used funds belonging to the trust to buy a house in Georgia, titling the house in Dorothy's name rather than the 2017 Trust, and designated himself as co-owner of various 2017 Trust bank accounts. Niki thereafter allegedly withdrew more than one million dollars from the trust accounts.

In August 2021, a doctor in Georgia opined that Dorothy's dementia had progressed significantly and she had no legal capacity. Two weeks later, Herbert attempted to revoke the 2017 Trust, acting on his behalf and purportedly acting on Dorothy's behalf through her durable power of attorney, even though that document did not specifically grant him the power to revoke or amend the 2017 Trust on Dorothy's behalf. Herbert created a new trust in March 2022, which significantly reduced Angela's distribution as a beneficiary to the benefit of Niki and Nicholas. Herbert died one month later in April 2022.

Williams thereafter filed a petition in Nevada requesting the district court to assume jurisdiction over the 2017 Trust. Williams urged the district court to confirm that the 2017 Trust was still valid and that he was the successor trustee. Williams also contended that Niki and Nicholas exerted undue influence over Herbert and Dorothy and committed elder abuse. Niki opposed the petition, arguing that Georgia had jurisdiction over

the 2017 Trust. The district court agreed with Williams and asserted jurisdiction over the Trust.

Niki failed to meaningfully participate in discovery at any point in the case, including failing to provide his NRCP 16.1 mandatory disclosures. Williams, however, disclosed abundant evidence, including an expert medical report from Dr. Gregory Brown, opining that Dorothy lacked capacity as of her hospitalization on September 30, 2018. But in a hearing both parties stipulated that Dorothy had lost all legal capacity by at least August 2021.

Williams filed an initial motion for partial summary judgment and to apply the Trust's no-contest provision² to Niki and Nicholas. The district court initially refused to apply the no-contest provision, but it confirmed that Herbert did not have the authority to revoke the 2017 Trust as Dorothy's agent with generalized durable powers of attorney, meaning that the 2017 Trust was still valid. The court also interpreted Article III, section 3.1 of the Trust as precluding the removal of assets and property from the Trust "without the Trust receiving something of reasonably equal value in return." The court then confirmed Williams as a trustee to the 2017 Trust, ordered Niki to return all the 2017 Trust assets and "to provide a complete accounting of all Trust assets," and imposed a constructive trust over all Trust property improperly removed from the Trust. However, Niki did not comply with that order, and he failed to provide a complete accounting of the Trust assets.

²A no-contest clause "means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument." NRS 163.00195(8)(a).

Williams subsequently filed an emergency motion seeking an injunction against Niki to prevent him from withdrawing any assets from the 2017 Trust. In addition, Williams asked the court to apply a presumption of undue influence against Niki and Nicholas, and thereby shift the burden onto them to show, by clear-and-convincing evidence, that they did not exert undue influence over Dorothy and Herbert. Niki responded in opposition in a hearing, but the district court granted the motion in full.

During the last stages of the litigation and after August 2021, an attorney filed a motion to intervene on Dorothy's behalf under NRCP 19. The district court denied that motion because (1) Dorothy lacked contractual capacity and could not form a contract with a lawyer and (2) either Niki or Williams represented her interest in the suit through their durable powers of attorney.

After the discovery deadline passed, Williams moved for summary judgment on all remaining issues. The district court, relying upon NRCP 37(c), disallowed Niki from using, in support of his opposition to the motion for summary judgment, any evidence not already disclosed because he failed to provide any discovery, including his NRCP 16.1 required disclosures. Niki filed an opposition to the motion, but he only included his own declaration containing apparent hearsay evidence of Herbert's statements and then evidence disclosed by Williams. And, in considering Williams's motion for summary judgment, the court applied an adverse inference regarding the trust funds because Niki failed to provide a full accounting of all the Trust assets, contrary to the court's prior order. Thus, the district court concluded Niki failed to oppose the motion for summary judgment with admissible evidence such that no genuine dispute of material fact remained and Williams was accordingly entitled to summary

judgment in his favor. Specifically, the district court found that all the trust amendments after September 30, 2018, were based upon undue influence, fraud, and exploitation of an elderly person. Further, the court ordered Niki and Nicholas to return all the money and assets improperly withdrawn from the trust; it entered a judgment against Niki for approximately \$2.3 million dollars, and it applied the no-contest provision to both Niki and Nicholas. These appeals followed.

Standing

First, Niki argues that the district court erred by finding Williams had standing, as the successor trustee, to bring the petition concerning the 2017 Trust. Niki contends Williams did not have the authorization to challenge the subsequent Georgia modifications and revocations or nullify Dorothy's and Herbert's actions as original grantor trustees and that the district court therefore lacked jurisdiction concerning the trust matters. Williams responds that the 2017 Trust was a Nevada trust, made in Nevada, and included a provision that Nevada courts could assert jurisdiction over the trust.

This court reviews whether a party has standing de novo. *Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. 259, 261, 507 P.3d 1203, 1207 (2022). "The question of standing concerns whether the party seeking relief has a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party." *Id.* at 261-62, 507 P.3d at 1207 (internal quotation marks omitted).

A trustee of an express trust has standing to bring a petition against a trust and the district court can establish jurisdiction over the trust if the trust designates that Nevada has jurisdiction over the trust. NRS 164.010. Further, "[t]he court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal

affairs of a nontestamentary trust.” NRS 164.015(1). That includes whether a “settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence,” and generally any other “declaration of rights and the determination of other matters involving trustees and beneficiaries of the trust.” *Id.*

Here, the 2017 Trust designated Williams as the successor trustee, and had a provision establishing that any interested party could petition a Nevada court to establish jurisdiction over it. Thus, we conclude that Williams had standing to pursue this action because he was an interested party as the designated successor trustee. Further, the district court had jurisdiction to consider all the other claims presented, including whether the 2017 Trust was valid, whether Dorothy was competent and had legal capacity, and whether Niki and Nicholas asserted undue influence over Dorothy. *See* NRS 164.015(1), (4) (stating when the district court has jurisdiction over a trust and authorizing it to resolve claims of undue influence). Thus, Niki’s argument that Williams did not have standing, and that the district court accordingly lacked jurisdiction concerning the trust matters, is without merit.

Disputes of material fact

Second, Niki challenges the district court’s decision to grant summary judgment in favor of Williams.³ Niki contends genuine disputes of fact remain because Williams failed to produce credible evidence supporting his claims, including his contentions concerning Dorothy’s lack

³Niki does not specifically challenge the district court findings and judgment as to elder abuse and the exertion of undue influence. As a result, we decline to consider these issues on appeal. *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 forfeited).

of legal capacity and the application of the presumption of undue influence. Williams responds that he met his burden to establish that he was entitled to summary judgment in his favor and that Niki provided no admissible evidence to create a genuine dispute of material fact, meaning the district court did not err as a matter of law when it granted summary judgment.

This court reviews a district court's 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 the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence "must be viewed in a light most favorable to the nonmoving party." *Id.*

The party moving for summary judgment must meet its initial burden of production to show no genuine disputes of material fact exist. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact." *Id.* at 603, 172 P.3d at 134. General allegations and conclusory statements do not create genuine disputes of fact. *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

Here, Williams presented evidence supporting all his claims. To support his claim that Dorothy lacked legal capacity, Williams submitted an expert report that forensically analyzed hundreds of pages of her medical records and determined with a reasonable degree of psychiatric probability that Dorothy had lost her capacity on September 30, 2018, when she was hospitalized, and that she would not later recover capacity.

Likewise, Williams supported his claim that the presumption of undue influence should apply by admitting the various trust documents,

showing that Niki and Nicholas were fiduciaries to Herbert and Dorothy, and Niki and Nicholas also stood to gain as beneficiaries to the 2017 Trust and all its subsequent modifications and its final replacement. Williams further supported his claim that Niki and Nicholas exerted undue influence by including the depositions of Angela and Williams which detailed the vulnerability of Herbert and Dorothy; financial records of the 2017 Trust showing more than a million dollars had been inexplicably withdrawn from various trust bank accounts; and the various attempted modifications and revocations of the 2017 Trust where Niki and Nicholas were purportedly appointed as successor trustees and their comparative inheritances increased at Angela's expense.

In contrast, Niki failed to comply with the mandatory disclosure requirements under NRCP 16.1, and he failed to provide any other evidence or disclose witnesses by the discovery deadline. The district court thus prohibited Niki from using, in support of an opposition to the motions for summary judgment, any information or testimony by witnesses not previously disclosed by the discovery deadline pursuant to NRCP 37(c). Further, the district court applied an adverse inference concerning Niki's failure to adequately account for the Trust's assets. And because Niki presented no evidence in opposition to Williams's motions for summary judgment that created a genuine dispute of material fact, he did not meet his burden concerning Williams's claims. *See Cuzze*, 123 Nev at 602, 172 P.3d at 134 (requiring the party opposing a motion for summary judgment to support it with specific facts provided by affidavit or other admissible evidence). Thus, because Niki failed to meet his burden to demonstrate there remained genuine disputes of material fact, we conclude the district court properly granted summary judgment in favor of Williams.

Joinder

Third, Niki argues that the district court abused its discretion when it declined to join Dorothy as a necessary party pursuant to NRCP 19. Williams responds that Dorothy was incapacitated and he held the only valid power of attorney to bring litigation on Dorothy's behalf and to transfer real property in her name, and he therefore sufficiently represented her interests.

"The district court has broad discretion to allow or deny joinder of parties." *Cummings v. Charter Hosp. of Las Vegas, Inc.*, 111 Nev. 639, 645, 896 P.2d 1137, 1140 (1995). NRCP 19(a) provides for the joinder of persons needed for just adjudication. It provides that "required parties" must be joined if subject to service of process and joinder will not deprive the court of jurisdiction over the subject matter of the action. NRCP 19(a). A party must be joined under NRCP 19(a) only if (1) complete relief cannot be accorded in the person's absence, (2) the person claims an interest in the subject of the action, or (3) adjudication in the person's absence potentially subjects a party to double, multiple, or otherwise inconsistent obligations. NRCP 19(a)(1).

Moreover, Nevada allows indispensable party challenges for the first time on appeal. *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 152, 445 P.3d 860, 866 (Ct. App. 2019). And "[w]hether a party is necessary does not depend upon broad labels or general classifications, but rather comprises a highly fact-specific inquiry." *Id.* at 153, 445 P.3d at 867. "Rule 19 calls for courts to make pragmatic, practical judgments that are heavily influenced by the facts of each case. There is no precise formula for determining whether a particular nonparty must be joined under Rule 19(a)." *Id.* at 153-54, 445 P.3d at 867 (internal citations and quotation marks omitted).

To render a complete adjudication in any civil action, “all persons materially interested in the subject matter of the suit [must] be made parties so that there is a complete decree to bind them all.” *Olsen Fam. Tr. v. Eighth Jud. Dist. Ct.*, 110 Nev. 548, 553, 874 P.2d 778, 781 (1994). For this reason, the supreme court has held that the failure to join a necessary party to a case was “fatal to the district court’s judgment.” *Id.* at 554, 874 P.2d at 782; *see also Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 396, 594 P.2d 1159, 1163 (1979). “If an entity required by NRCP 19 is not joined as a party, a district court should not enter a final order.” *Las Vegas Police Protective Ass’n v. Eighth Jud. Dist. Ct.*, 138 Nev. 632, 636, 515 P.3d 842, 847 (2022).

An agent may represent their principal in a lawsuit so long as the principal grants the agent the authority to participate in litigation. NRS 162A.470(4); NRS 162A.560. Further, if a person is found to lack capacity, then a fiduciary may represent the incapacitated person so long as they were given powers to represent the principal in legal affairs, claims, and litigation. NRCP 17(c)(1)(D) (detailing that “a like fiduciary” is a representative who “may sue or defend on behalf of a minor or an incapacitated person”).

Here, the district court found that Williams held the only valid durable general powers of attorney as to Dorothy, which would allow him to represent Dorothy’s interest during the litigation. The court reviewed the relevant documents and concluded that Dorothy granted Williams the authority to represent her in legal proceedings. *See* NRS 162A.560 (stating a person granted power of attorney may, among other things, pursue claims for relief or causes of action on behalf of the principal); NRCP 17(c)(1) (stating that a representative of an incapacitated person may sue or defend on that person’s behalf). Thus, because the district court found Dorothy

lacked legal capacity and that Williams was able to represent her due to the power of attorney previously granted by Dorothy, Williams adequately represented Dorothy's interests as her agent and fiduciary during the lawsuit. Therefore, because Williams adequately represented Dorothy's interests, Dorothy herself was not a necessary party and need not have been joined to this action. *See* NRCP 19(a)(1). Accordingly, the district court did not abuse its discretion by denying the motion to join Dorothy to the lawsuit. *See Cummings*, 111 Nev. at 645, 896 P.2d at 1140.

Trust interpretation

Finally, Niki argues that the district court erred when it interpreted a provision of the trust—stating that any disbursement from the trust had to be replaced with something of equivalent value—and applied it against Niki and Nicholas when trust funds were used to buy the Georgia house.

Where the underlying facts are not disputed, this court reviews a district court's interpretation of a trust *de novo*. *In re 23 Partners Tr. I*, 138 Nev. 836, 840, 521 P.3d 1190, 1194 (2022). “[This court] will construe a trust so as to give effect to the grantor's apparent intent.” *Id.* “To ascertain the grantor's intent, [this court] appl[ies] contract principles, considering the trust as a whole and seeking the most fair and reasonable interpretation of the trust's language.” *Id.* (internal quotation marks omitted); *see also Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032, 1039 (2004) (stating “when a contract is clear, unambiguous, and complete, its terms must be given their plain meaning and the contract must be enforced as written”).

The relevant section of the 2017 Trust reads:

A Trustee is limited in the exercising of his or her powers in that the Trustee must protect the Trust from the demands of Beneficiaries and the

Grantors and may not exchange, purchase or otherwise deal with the Trust Property in any transaction or event involving the beneficiaries or Grantors without receiving reasonable consideration for the value of the property.

The district court found that this “provision prohibited any Trustee from permitting Trust property to be transferred to a Grantor or to any beneficiary without the Trust receiving something of reasonably equal value in return.” It went on to state that “in other words, the property of this Trust could not be removed into the hands of [Niki and Nicholas] or [Dorothy] . . . without reasonably equivalent value being put back to the trust.” Thus, when funds from the 2017 Trust were used to buy the Georgia house without titling the house in the name of the 2017 Trust, the district court concluded Niki and Nicholas improperly failed to return equivalent value to the trust and it therefore imposed a constructive trust over the home.

Niki argues the district court erroneously interpreted the aforementioned provision in the 2017 Trust, but his argument is unpersuasive. He argues that the provision providing trustees with “sole and absolute discretion” to provide “the net income and principal from the Trust [which] shall be distributed to the Primary Beneficiaries as is necessary” is incongruent with the above provision requiring equivalent replacement value. Rather, he asserts that the equivalent value provision is meant to prevent creditors and judgments from accessing any potential distributions. But this argument is not supported by any legal authority or the record, nor did he argue this point in the district court. Thus, this court need not consider it further. *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 the support of relevant authority); *Old Aztec Mine, Inc. v. Brown*,

97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are “deemed to have been waived and will not be considered on appeal”).

Furthermore, we conclude that the “sole discretion” provision does not interfere with the equivalent value provision because the “sole discretion” provision allows for the distribution of income and principal of the trust to the beneficiary when necessary; however, that only involves distributing the income and principal. Conversely, if there is a distribution from the trust beyond the purpose of providing income to Dorothy, then that distribution needs an equivalent replacement value. And here, use of funds to buy the Georgia house may have been proper, but if so, then it needed to have been titled in the name of the Trust. Thus, this argument does not provide Niki with any form of relief, and the district court did not err in its interpretation of the provision nor in applying it to Niki for the use of the 2017 Trust funds for the purchase of the Georgia house. Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁴


_____, J.
Gibbons


_____, J.
Westbrook

⁴Insofar as Niki raised 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. Robert W. Lane, District Judge
Eleissa C. Lavelle, Settlement Judge
Anthony L. Barney, Ltd.
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Blut Law Group, APC
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