


IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN KENNETH MICHAEL AND
SEAN M. MICHAEL,
Appellants,
vs.
OLD REPUBLIC TITLE COMPANY OF
NEVADA, A NEVADA CORPORATION,
Respondent.

No. 49516

FILED

MAR 07 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE,
AND DIRECTING COUNSEL
TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED

This appeal challenges a district court summary judgment, certified as final under NRCP 54(b), in a civil conspiracy action.¹ Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellants Steven and Sean Michael agreed in writing for respondent Old Republic Title Company of Nevada to withhold equity funds from the sale of their home, to satisfy a judgment lien, so that Old Republic would issue title insurance. Additionally, the Michaels replaced the funds with a bond so that Old Republic would issue the title policy without reflecting the judgment lien. Despite the parties' agreement, the Michaels subsequently filed a district court complaint against Old Republic and the judgment lien holder, Westridge,² alleging that

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

²Westridge is not a party to this appeal.

Westridge and Old Republic had conspired to divest them of their equity funds, and that Old Republic's actions were arbitrary and capricious.

Thereafter, Old Republic moved to dismiss the complaint, or alternatively, for summary judgment. The Michaels opposed the motion, but the district court ultimately granted summary judgment to Old Republic and certified the judgment as final under NRCP 54(b). This appeal followed.³

In deciding a motion to dismiss, when, as here, the district court considers matters that are raised outside of the pleadings, the dismissal motion is treated as a motion for summary judgment.⁴ Accordingly, on appeal, we conduct a de novo review.⁵ Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in a light most favorable to the Michaels, demonstrate that no genuine issue of material fact remains in dispute and that Old Republic was entitled to

³On appeal, the Michaels apparently challenge the district court's determination to certify the summary judgment as final under NRCP 54(b). We conclude that NRCP 54(b) certification was proper, as the order resolved all issues with respect to Old Republic, and the Michaels have not demonstrated that the district court grossly abused its discretion in determining that there was no just reason for delay. See Mallin v. Farmers Insurance Exchange, 106 Nev. 606, 611, 797 P.2d 978, 981-82 (1990) (noting that the district court's certification of finality based on a party's complete removal from the action will be presumed valid and will be upheld by this court absent a gross abuse of discretion).

⁴See NRCP 12(b).

⁵Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

judgment as a matter of law.⁶ To withstand summary judgment, the Michaels could not rely solely on the general allegations and conclusions set forth in their complaint, but must instead have presented specific facts demonstrating the existence of a genuine factual issue supporting their claims.⁷

Having reviewed the parties' briefs and appendix, we conclude that the district court properly granted summary judgment. Although, as explained below, it is difficult to determine the grounds upon which the Michaels challenge the district court's summary judgment,⁸ we note that the Michaels have not disputed the authenticity of the escrow instructions or of the indemnity agreement; nor did they dispute that they had instructed Old Republic to withhold money to cover a judgment lien.⁹ According to the record, Old Republic followed the escrow instructions, and the Michaels accepted the terms of the executed contracts by

⁶Id.

⁷NRCPC 56(e); see also Wood, 121 Nev. at 730-31, 121 P.3d at 1030-31.

⁸It is unclear from the Michaels' briefs what issues they raise for our review on appeal. Nevertheless, we have considered the arguments that the Michaels appear to make; we are not required to delve into the record merely to ascertain matters that should have been raised in the briefs. State v. Cecchettini, 45 Nev. 238, 244, 201 P. 547, 547 (1921).

⁹See NRS 692A.220(1)(b) (providing that a title company must determine the insurability of the title in accordance with its underwriting practices).

replacing the funds with a bond and closing escrow.¹⁰ Accordingly, because the Michaels failed to demonstrate the existence of any facts upon which they could base a claim for relief with regard to Old Republic's liability, we affirm the district court's summary judgment order.¹¹

Finally, in its answering brief, Old Republic points to various inadequacies in the Michaels' opening brief, including their counsel's failure to adequately cite to the record and supporting legal authority, as well as counsel's failure to provide any factual or legal analysis of the Michaels' contentions.

As noted, the Michaels' opening and reply briefs, prepared by attorney Stanley W. Pierce, fail to adequately inform this court of the Michaels' appellate arguments, and they also appear to violate NRAP 28's requirements. Under NRAP 28(e), every factual assertion contained in briefs is required to be supported by a reference to the page in the appendix or transcript where the fact relied on can be found. Although the Michaels' briefs contain a few citations to the appendix, those portions of

¹⁰In performing the contract, the Michaels waived any dispute as to its terms. See Udevco, Inc. v. Wagner, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (noting that waiver can be implied from conduct, including accepting performance); see also Operating Eng. Pension Trust v. Gilliam, 737 F.2d 1501, 1504 (9th Cir. 1984) (noting that, by signing a written agreement, a party is usually bound by its terms).

¹¹Wood, 121 Nev. at 729, 121 P.3d at 1029. Having considered all of the other issues that the Michaels appear to have raised, including that they have a right to a jury trial, their NRCP 59(e) motion was improperly denied, there was no compliance with NRS 115.050 and 645A.177, and the district court failed to follow Nevada Supreme Court precedent, we conclude that these contentions lack merit and do not warrant reversal of the district court's summary judgment.

the record do not appear to support the seemingly exaggerated and conclusory assertions in the briefs, and in some instances, the briefs ostensibly misconstrue the evidence, in apparent violation of RPC 3.3(a)(1).¹² For instance, the opening brief contains assertions that Old Republic “arbitrarily refused” to disburse the equity funds and that it acted in concert with the judgment lien holder to conspire, cause inconvenience, swindle, convert, steal, or take the equity funds. The brief also asserts that Old Republic’s actions were arbitrary and capricious and done solely with the intent to benefit a non-deserving judgment creditor. Nothing in the record appears to support these assertions, however. Further, the opening brief cites to the Michaels’ district court opposition to the motion for summary judgment in apparent violation of NRAP 28(e)’s directive not to incorporate by reference a memorandum of law that was filed in the district court.

Moreover, the briefs fail to adequately cite to relevant legal authority and to provide pertinent legal analysis of the relevant issues. NRAP 28(a)(4) requires that arguments in briefs explain the parties’ contentions regarding the issues presented for our appellate review, which must be supported by “citations to the authorities, statutes and parts of the record relied on.”¹³ Here, however, after reciting several statements of legal principles, the opening brief’s “analysis” of those principles is merely one sentence. Additionally, the opening brief cites to numerous legal

¹²See Thomas v. City of North Las Vegas, 122 Nev. 82, 95-96, 127 P.3d 1057, 1066-67 (2006).

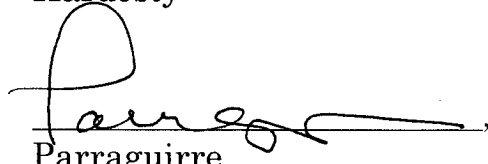
¹³See also Barry v. Lindner, 119 Nev. 661, 672, 81 P.3d 537, 544 (2003).

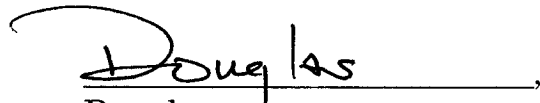
propositions that appear to have no bearing on the issues seemingly pertinent to our review of this appeal.

Accordingly, NRAP 28A sanctions appear warranted.¹⁴ Attorney Pierce shall have fifteen days from this order's date within which to show cause why he should not be personally sanctioned for failing to comply with our appellate procedural rules. Old Republic may file any reply within ten days from the date that Pierce's response is served.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Mark R. Denton, District Judge
William F. Buchanan, Settlement Judge
Stanley W. Pierce
Marquis & Aurbach
Eighth District Court Clerk

¹⁴Under NRAP 28A(b), we may impose sanctions when an attorney's certification is incomplete or inaccurate.