IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMMIE TOWNSEND,
Appellant,
vs.
R & N CONSTRUCTION, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 50832

FILED

JUN 30 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment following a short trial in a breach of contract action. Eighth Judicial District Court, Clark County; Stefany A. Miley, Judge.

This case arises out of a dispute between appellant Tommie Townsend, the owner/general contractor of a new residence, and respondent R&N Construction, LLC, the subcontractor. Townsend failed to pay R&N and refused to let R&N on the property to complete its work. R&N sued Townsend for breach of contract, and the district court awarded R&N $14,000 in damages.

Our review of the documents submitted to this court revealed a potential jurisdictional defect. Specifically, it appeared that the judgment appealed from might not be substantively appealable because it was not approved by signature of the district court judge. See NRAP 3A(b); Nevada Short Trial Rule 3(d)(4). Consequently, we entered an order to show cause why this appeal should not be dismissed for lack of jurisdiction.

Townsend has filed a response to our order to show cause. Attached to Townsend's response is an "Order for Final Judgment" that indicates that the judgment appealed from was approved by signature of

the district court judge on May 29, 2009. Accordingly, it appears that this court has jurisdiction over this appeal. Cf. Knox v. Dick, 99 Nev. 514, 665 P.2d 267 (1983) (providing that notice of appeal filed before entry of an order certifying a judgment as final pursuant to NRCP 54(b) may be considered timely filed upon entry of the certification order); NRAP 4(a)(6). We conclude that we have jurisdiction over this appeal.

On appeal, Townsend argues that the district court erred by awarding R&N damages because: (1) NRS 624.624 and NRS 624.626 should have been applied, and (2) there was not substantial evidence to support the award.[1] For the following reasons, we conclude that Townsend's arguments fail and, therefore, we affirm the judgment of the district court. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

In reviewing the district court's judgment, this court gives deference to the district court's factual findings, so long as they are not clearly wrong and are supported by substantial evidence. See NOLM, LLC v. County of Clark, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004); Gibellini v. Klindt, 110 Nev. 1201, 1204, 885 P.2d 540, 542 (1994). Substantial evidence has been defined as evidence that "a reasonable

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[1]R&N argues that NRAP 9(d) required Townsend to provide a statement of the evidence or proceeding since there was no transcript of the district court proceedings. However, the language of the rule states: "the appellant may prepare a statement of the evidence or proceedings from the best available means, including appellant's recollection." NRAP 9(d) (emphasis added). Since the language of the rule is permissive, Townsend was not required to provide a statement of the evidence or proceeding. Because the trial exhibits were included in the record on appeal, the record is sufficient to address the merits of Townsend's claims.

mind might accept as adequate to support a conclusion." First Interstate Bank v. Jafbros Auto Body, 106 Nev. 54, 56, 787 P.2d 765, 767 (1990) (quotations omitted), superceded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener, 124 Nev. ___, ___, 192 P.3d 243, 255 (2008). This court reviews questions of law de novo. SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

NRS 624.624 and NRS 624.626

Townsend argues that R&N acted unlawfully by stopping work at the residence without notice and that he properly withheld payment from R&N, and thus, the district court erred in awarding R&N damages.[2] We disagree.

Pursuant to NRS 624.624, if Townsend intended to withhold payment to R&N, a lower-tiered subcontractor, Townsend "must give, on or before the date the payment is due, a written notice to the lower-tiered subcontractor of any amount that will be withheld." NRS 624.624(3). The written notice of withholding must identify the amount being withheld and "[g]ive a reasonably detailed explanation of the condition or the reason" for withholding payment, "including, without limitation, a specific reference to the provision or section of the agreement with the lower-tiered

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[2]Townsend did not raise NRS 624.624 and NRS 624.626 below, and "[g]enerally, failure to raise an argument in the district court proceedings precludes a party from presenting the argument on appeal." Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006). However, the statutes deal with the same theory argued by Townsend below, that Townsend rightfully withheld payment. Therefore, he did not waive his right to rely on these statutes on appeal. Western Tech. v. All-Am. Golf Ctr., 122 Nev. 869, 873 n.8, 139 P.3d 858, 860 n.8 (2006).

subcontractor, and any documents relating thereto, and the applicable building code, law or regulation with which the lower-tiered subcontractor has failed to comply." NRS 624.624(3)(b).

Based on the record on appeal, Townsend failed to satisfy the requirements of NRS 624.624, and thus, could not lawfully withhold payment. The notices sent by Townsend to R&N did not include references to how much was being withheld, any reference to the parties' agreement, or any applicable building code, law or regulation. Instead, Townsend's letters to R&N were 24-hour notices to fix the problems or vacate the work site—they were not drafted to comply with NRS 624.624. Furthermore, R&N did not stop work because of nonpayment, which would have required compliance with NRS 624.626. Rather, R&N was willing to continue working, even though Townsend was withholding payment, but Townsend prevented R&N from returning to work.

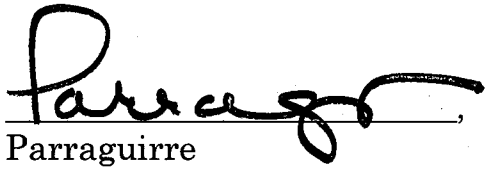
Given the fact that Townsend did not follow the statutory requirements of NRS 624.624, even if the district court had considered this statute, Townsend would not have prevailed. There is substantial evidence to support the district court's finding in favor of R&N and its decision to award damages.

Amount of the district court award

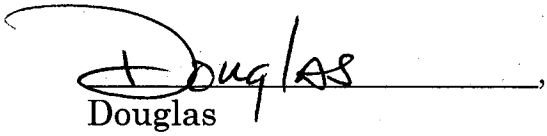
Townsend also argues that the district court erred in awarding R&N damages in the amount of $14,000. Townsend argues that because the district court did not explain how it calculated the award, it is impossible to discern how the district court arrived at $14,000, and therefore, this court must conclude the district court erred in awarding that amount. We disagree.

After reviewing the record on appeal, we conclude there was substantial evidence supporting the district court's award. It is undisputed that Townsend had yet to pay R&N at least $8,247, pursuant to the parties' original agreement. Additionally, Townsend made changes to the original plan for the residence, which resulted in R&N completing additional work on the residence. There was a dispute over how much Townsend owed R&N for this additional work, but R&N produced bills for the additional work and materials in the amount of $8,554.29. A reasonable mind might accept these facts as adequate support that Townsend owed R&N $14,000. Thus, there is substantial evidence supporting the district court's award. Accordingly we,

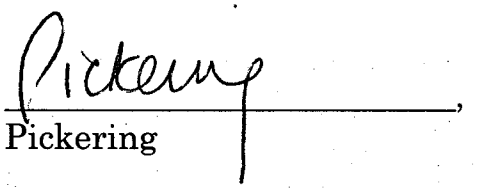
ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Stefany A. Miley, District Judge
William A. Brannon, Short Trial Judge
Michael H. Singer, Settlement Judge
Kolesar & Leatham, Chtd.
Keith E. Gregory & Associates
Eighth District Court Clerk