IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD J. MCMILLAN AND IRENE MCMILLAN, HUSBAND AND WIFE,
Appellants,
vs.
DAIMLER CHRYSLER SERVICES D/B/A MERCEDES BENZ CREDIT D/B/A DAIMLER CHRYSLER SERVICES NORTH AMERICA LLC, D.C.S.,
Respondents.

No. 53133

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a contract and tort action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge

On appeal, appellants challenge the district court's entry of summary judgment against them on their complaint for, among other things, breach of contract and defamation, the district court's summary judgment against them on respondents' counterclaim, and the district court's award of attorney fees and costs to respondents.

The district court granted summary judgment to respondents on appellants' claims based on its conclusion that the March 2005 letter on which appellants' claims were based did not constitute a valid contract as there was no consideration given for the promise regarding how the situation resulting in appellants' return of the subject vehicles would be reported to various credit reporting agencies. This court reviews a district court order granting summary judgment de novo, and pleadings and other proof are viewed in the light most favorable to the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 729, 732, 121 P.3d 1026, 1029, 1031 (2005).

On appeal, appellants argue that summary judgment on their claims was improper because, among other things, the March 2005 letter constituted a valid contract supported by consideration. From our review of the briefs and record on appeal, the adequacy of consideration is the critical issue for our review of the district court's summary judgment on appellants' claims. In making their arguments, however, appellants do not cite to or discuss any relevant authority regarding this consideration issue. Indeed, appellants cite to no cases whatsoever discussing any contractual principles, as their brief cites to only two cases, Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), for the summary judgment standard, and Staschel v. Weaver Brothers, Ltd., 98 Nev. 559, 655 P.2d 518 (1982), which pertains to their arguments regarding respondents' counterclaim, and thus has no bearing on this issue. Accordingly, as appellants have failed to provide any authority or analysis regarding this critical issue, we necessarily affirm the district court's decision to grant summary judgment on appellants' claims based on the absence of consideration.[1] See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider allegations of error not cogently argued or supported by any pertinent legal authority).

With regard to the district court's grant of respondents' unopposed motion for summary judgment on their counterclaim and attorney fees and costs, appellants argue that the summary judgment

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[1]As the inadequacy of consideration regarding the March 2005 letter is determinative of the validity of appellants' district court claims, we do not address appellants' remaining assertions of district court error regarding their complaint.

should be set aside because their former counsel's failure to oppose this motion amounted to misconduct under Staschel, 98 Nev. at 560-61, 655 P.2d at 519. Appellants' reliance on Staschel is misplaced, however, because they allege no misrepresentation related to their counsel's failure to oppose, Durango Fire Protection v. Troncoso, 120 Nev. 658, 662-63, 98 P.3d 691, 694 (2004), and this failure to oppose amounts to negligence on the part of their former counsel, not misconduct. Staschel, 98 Nev. at 560-61, 655 P.2d at 519 (permitting a judgment to be set aside for actual misconduct by one's attorney, rather than mere negligence). Accordingly, as we find no reversible error with the district court's grant of respondents' unopposed motion, DCR 13(3) (failure to oppose a motion may be construed as an acknowledgment that the motion is meritorious and as consent to grant the motion), we affirm the district court's grant of respondents' unopposed motion for summary judgment and attorney fees and costs.[2]

It is so ORDERED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

[2]In light of appellants' failure to oppose respondents' motion, we need not consider appellants' remaining arguments regarding the summary judgment in respondents' favor and the attorney fees and costs award.

cc: Hon. Douglas W. Herndon, District Judge
Paul H. Schofield, Settlement Judge
Law Offices of Donn M. Ianuzi
Michael J. Warhola, LLC
Poli, Ball & Shively
Eighth District Court Clerk