

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA WELDON,  
Appellant,  
vs.  
MARK NEIBER,  
Respondent.

No. 53170

**FILED**

**MAY 26 2011**

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

This is an appeal from a district court judgment in a corporations action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Patricia Weldon and respondent Mark Neiber had a personal and business relationship and were shareholders in Launch Marketing Concepts, Inc. (LMCI), a Nevada corporation. Weldon and Neiber agreed that Weldon would serve as president, while Neiber would act as secretary and treasurer; however, it was later contested whether they were both directors, or whether Weldon held the sole director title. The parties' business agreement provided for venue of claims litigated regarding the agreement to be in California, and the business bank accounts were set up in California. The corporation's sole asset of any real value was a brokerage agreement to broker the sale of products from Xyience Incorporated (Xyience) to General Nutrition Centers. This agreement provided for a base monthly commission of \$14,000 and a percentage of the sales.

After the personal relationship soured, both parties proceeded to treat the business accounts as their own. Weldon attempted to cut Neiber out of the business, and Weldon and Neiber both made inaccurate corporate filings with the Nevada Secretary of State. After Neiber's

attorney sent a demand letter to Xyience informing them that Weldon was not allowed to act without Neiber's consent, Xyience cancelled the LMCI agreement for Neiber's violation of certain sections of the contract.

Neiber then filed an action in Nevada seeking control of the corporation, and Weldon filed an action in California for breach of their business agreement and to recover the funds from the California business bank accounts. Weldon also filed counterclaims in the Nevada action, some of which duplicated claims in the California action. Weldon also sought a declaration as to the correct corporate structure of the business, a ruling that Neiber had forfeited his 40-percent share of the corporation by his conduct, and damages for Neiber's actions as to the Xyience contract. Neiber dropped his claims, and the Nevada action went to trial on Weldon's counterclaims. Weldon contends that she and Neiber agreed that any Nevada claims that duplicated the California claims should not be decided in Nevada—only the corporate governance and Xyience contract claims should be determined in this jurisdiction. Meanwhile, the California action remained pending.

Following trial, the district court ruled that: (1) Weldon is a 60-percent owner of LMCI and Neiber is a 40-percent owner, (2) Neiber converted monies from LMCI's bank account but that amount was commensurate with the value of Neiber's interest in the corporation, (3) LMCI was to be dissolved, (4) Neiber is permanently enjoined from interfering with Weldon's future business dealings, and (5) contractual interference damages were not proven. Following the ruling, the

California action was dismissed, and this appeal followed.<sup>1</sup> On appeal, Weldon contends that the district court improperly addressed claims that should have been left to the California action, that she was entitled to damages for Neiber's actions for breach of the Xyience contract, and that she was entitled to damages under NRS 225.084 for Neiber's fraudulent corporate filings. We disagree and affirm the district court on all issues.

#### Standard of review

The district court's factual findings are given deference and will be upheld if not clearly erroneous and if supported by substantial evidence. International Fid. Ins. v. State of Nevada, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." Whitemaine v. Aniskovich, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). However, we review a district court's conclusions of law de novo. Grosjean v. Imperial Palace, 125 Nev. \_\_\_, \_\_\_, 212 P.3d 1068, 1075 (2009).

#### Duplicative claims

Weldon argues that the district court erred by rendering a decision on her claims for conversion, contractual interference, defamation, dissolution/forced sale, and accounting monies due and owing, because the parties advised the court that these issues were pending in California and should not be dealt with in this case. Weldon contends that these statements by the parties amounted to an agreement on the record to dismiss or sever these claims. Going further, she argues that because the judge did not indicate that he would rule on these claims, she did not

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<sup>1</sup>The parties are familiar with the facts and we do not recount them further except as is necessary for our disposition.

provide the relevant testimony and evidence for a proper determination of these claims.<sup>2</sup>

Weldon's arguments fail. During trial, Weldon never amended the complaint or moved to strike or dismiss those claims. Instead, in a piecemeal and often convoluted fashion, Weldon orally indicated to the judge that he should not decide certain claims. We conclude that because Weldon went to trial on the issues that she presented to the district court in the counterclaim, and did not affirmatively act to sever, dismiss, or otherwise dispose of the claims, the district court properly adjudicated all claims.

#### Xyience contract

Weldon argues that the district court erred by failing to award damages on the breach of the Xyience contract. Weldon contends that the evidence shows that Neiber created and filed fraudulent documents with the Nevada Secretary of State and continued to refer to these fraudulent documents as proof that he was a director of LMCI and had the authority to pursue legal actions. As a counterpoint to Weldon's argument, Neiber argued at trial that the documents were not fraudulent, he was indeed a director of LMCI, he was acting merely to take back corporate control that he had been illegally stripped of, and he could not leave Weldon in control

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<sup>2</sup>Weldon also challenges jurisdiction, claiming that the district court should have allowed separate trials for the issues that were also before the California court in furtherance of convenience and economy, consistent with NRCP 42(b). However, we conclude Weldon's claim is without merit as the district court had the ability to determine all of the claims presented to it by Weldon. See NRCP 42 (repeatedly using the discretionary term 'may' for the district court's ability to order consolidation or separate trials).

because she took LMCI's money and subsequently proceeded to work for Xyience directly.<sup>3</sup>

We affirm the district court's conclusion that Weldon failed to demonstrate damages in this case. Weldon cites to a letter from Neiber's attorney and an e-mail that Neiber sent to Xyience's CFO as examples to support her position that Neiber caused damages. In these documents, Neiber sent messages to Xyience and Xyience's CFO informing Xyience that Weldon was not allowed to act without Neiber's consent and directing that the \$14,000 LMCI monthly commission check be sent to him at a different address. While Neiber fully admitted to sending this letter and e-mail, Weldon has still failed to show that the communications caused her any damage. Instead, it is clear from the record that Xyience did not act upon these communications from Neiber. Accordingly, we conclude that the district court did not err in its determination that damages were not proper based on the alleged breach of the Xyience contract.

#### Damages under NRS 225.084

Weldon argues that the district court erred in failing to award statutory or actual damages after the district court found violations of NRS 225.084. Weldon argues that nothing in the statute authorizes the district court to withhold statutory penalties. She contends that the filings damaged her by prolonging the case, adding costs, and affecting the California action. Weldon also argues that Neiber deliberately committed

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<sup>3</sup>Neiber did not file an answering brief in this appeal because under NRAP 46(b), a party may file briefs in proper person only with leave of this court, and this court has not granted Neiber leave to file briefs in proper person.

these acts to defraud her and Xyience, convert corporate funds, deliberately destroy the business relationship between Xyience and LMCI, and defraud the judicial process.

NRS 225.084 imposes civil liability for filing records that were forged or fraudulently altered, that contain a false statement of material fact, or that were filed in bad faith or for the purpose of harassing or defrauding a person. The plain language of NRS 225.084(2) provides that “[a]ny person who violates this section is liable in a civil action,” which is an unequivocal statement that provides no leeway on its face. See Beazer Homes Nevada, Inc. v. Dist. Ct., 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004) (in interpreting statutes under our de novo review, when a statute is clear on its face, we will not look beyond the statute’s plain language). Moreover, each incident is assessed additional damages, either the actual damages or \$10,000, whichever is greater. See NRS 225.084(2)(a).

We agree with the district court’s conclusion that Neiber filed a false and fraudulent document with the Nevada Secretary of State but that further penalties were not warranted under NRS 225.084. First, it is alleged by Weldon that Neiber’s April 21, 2006, filing setting forth the annual list of officers was false and fraudulent. However, the evidence supports the notion that Neiber may have been a director of LMCI—Neiber argued that he was a director, the district court did not conclude otherwise, a corporation may have multiple directors, and the director space was initially left blank. See Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031, 923 P.2d 569, 573 (1996) (holding that a determination based on substantial evidence will not be reversed based on conflicting evidence). Nevertheless, Neiber’s February 9, 2007, annual list of officers, in which he removed Weldon from all offices of the corporation and gave

himself each position, was inaccurate. While Weldon urges us to determine that the district court's conclusion that Neiber filed false and fraudulent documents with the Nevada Secretary of State and other agencies was based upon both filings, we conclude that the district court's statement was based upon Neiber's second filing alone.

We further conclude that the district court properly declined to award damages because Weldon also violated NRS 225.084 with her April 13, 2006 filing, in which she removed Neiber from the offices of secretary and treasurer on the annual list of officers based upon the improperly held shareholder's meeting. We conclude that further penalties are not warranted because the competing infractions cancel each other out.<sup>4</sup> While this was not the reasoning relied upon by the district court, we "will affirm the order of the district court if it reached the correct result, albeit for different reasons." Ford v. Showboat Operating Co., 110 Nev. 752, 756, 877 P.2d 546, 549 (1994) (quoting Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)). Accordingly, we


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<sup>4</sup>While this argument was not directly raised by the respondent in the district court, "[a] respondent may, [] without cross-appealing, advance any argument in support of the judgment even if the district court rejected or did not consider the argument." Ford v. Showboat Operating Co., 110 Nev. 752, 755, 877 P.2d 546, 548 (1994).


conclude that the parties' competing infractions effectively cancel each other out and, therefore, the district court did not err in failing to award damages.

Based on the foregoing discussion, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Mark R. Denton, District Judge  
Wright & Hoshizaki  
Mark Neiber  
Eighth District Court Clerk