

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES LANDAN A/K/A CHARLES
DAVID LANDAN,
Appellant,
vs.
WENDY KAZEL; AND THE LAW
OFFICES OF WENDY KAZEL,
Respondents.

No. 62390

FILED

APR 15 2015

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

ORDER OF AFFIRMANCE

This is a pro se appeal challenging a district court summary judgment in a torts action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Charles Landan was previously involved in a divorce action in which respondents Wendy Kazel and the Law Offices of Wendy Kazel (collectively referred to herein as Kazel) represented Landan's ex-wife. Seemingly related to that proceeding, certain negative comments began appearing on the Internet regarding Kazel and her handling of the divorce case. Kazel, assuming that the comments were posted by Landan, obtained a restraining order prohibiting him from having contact with her and from posting negative comments about her online. Kazel also filed the underlying action in the district court alleging that Landan had posted the comments and seeking, among other things, a preliminary injunction prohibiting him from continuing to do so. The district court denied the motion for a preliminary injunction on the ground that Kazel had failed to produce any evidence to show that it was actually

Landan who had posted the negative comments. Thereafter, the district court dismissed Kazel's complaint as a sanction for failing to properly participate in the discovery process.¹

After Kazel instituted the underlying action, Landan filed a district court countercomplaint alleging, among other things, abuse of process, assault, civil conspiracy, defamation, and slander of title. After the time for discovery had closed, Kazel filed a motion for summary judgment, arguing that Landan had not produced any evidence in discovery that would support his counterclaims. Over Landan's opposition, the district court granted summary judgment in favor of Kazel. Landan subsequently appealed the grant of summary judgment as to his counterclaims. At our direction, Kazel has filed a response to Landan's civil appeal statement.

Having considered Landan's arguments and the record on appeal, we conclude that the district court correctly granted summary judgment to Kazel. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that a district court's grant of summary judgment is reviewed de novo). As an initial matter, although Landan is correct that Kazel was sanctioned for failing to properly respond to discovery requests, the discovery commissioner did not recommend that this failure be construed as an admission with regard to Landan's counterclaims. *See* NRCP 37(b)(2)(A), (C). Instead, the discovery commissioner recommended that Kazel's claims be dismissed and that Landan's counterclaims should proceed. Given that Landan did not object

¹Kazel has not appealed these decisions of the district court.

to the discovery commissioner's recommendation, we conclude that the district court did not abuse its discretion in adopting the recommendation that Kazel's claims be dismissed as a sanction, *GNLV Corp. v. Serv. Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (explaining that an appellate court reviews the district court's discovery sanctions for an abuse of discretion), and this sanction did not relieve Landan of his duty to support his own claims with evidence demonstrating the existence of a genuine issue of material fact. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (explaining that, "if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by . . . pointing out . . . that there is an absence of evidence to support the nonmoving party's case," at which point, the nonmoving party must, "by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact" (second alteration in original) (internal quotation marks omitted)).

With regard to the merits of the summary judgment, Landan seems to argue, at least in part, that he could not provide proof because the allegations made by Kazel were false, and thus, there was no evidence with regard to these allegations. Landan appears to confuse the issue in this regard; as he was not required to provide proof regarding the truth of Kazel's allegations, but instead, he needed to provide evidence to demonstrate the existence of a question of fact with regard to the elements of each of his own claims. *See id.* For example, in regard to his claim for abuse of process, Landan was required to produce evidence demonstrating a genuine issue of fact as to whether Kazel filed an action with an ulterior

purpose other than resolving a legal dispute and whether, in the course of pursuing that action, she committed a willful act that was “not proper in the regular conduct of the proceeding.” See *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) (internal quotation marks omitted). Although Landan alleges that Kazel filed the underlying action for the ulterior purpose of obtaining a more favorable result for her client in the divorce proceeding and asserts that she repeatedly discussed the underlying action in the divorce case to cast him in a negative light, he has not produced any evidence to support these allegations, such as a transcript demonstrating that Kazel discussed the underlying action in the divorce case or copies of any documents that she filed in the divorce case discussing the underlying action.

Landan also argues that certain evidence in the record, such as admissions made by Kazel during discovery,² supported his counterclaims, but he has not identified evidence creating a genuine issue of fact sufficient for any of his claims to survive summary judgment. For instance, Landan contends that Kazel admitted that she had stated in the divorce pleadings that Landan had burned down a house, which he asserts demonstrates defamation per se. Landan, however, has not pointed to any evidence, such as an affidavit attesting that he has never committed such an act, to demonstrate a question of fact with regard to whether this statement was false. See *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706,

²Kazel’s responses to Landan’s requests for admissions appear in the record on appeal as attachments to Kazel’s oppositions to the motions to compel filed by Landan before Kazel’s claims were dismissed.

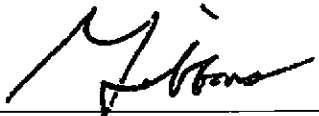
718, 57 P.3d 82, 90 (2002) (explaining that, in order to establish defamation, a plaintiff must demonstrate, among other things, that the defendant made a false and defamatory statement). Moreover, even assuming that the statement was false, in her response to Landan's request for admissions, Kazel stated that she made this statement based on an affidavit executed by her client. Thus, Kazel denied making the statement negligently, and because Landan did not submit any evidence to demonstrate a genuine issue of fact with regard to whether Kazel was negligent in making the statement, this claim necessarily fails. *See id.* (providing that the defendant's false and defamatory statement must have been made at least negligently to support a claim for defamation); *see also Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134. In this regard, we have considered each of Landan's claims and conclude that, for each claim, Landan has failed to produce evidence of the existence of a genuine issue of fact sufficient to prevent summary judgment.


Finally, insofar as Landan argues that he was prevented from presenting evidence by Kazel's failure to properly participate in discovery, Landan neither identified any evidence that he believed to be in Kazel's possession that would support his claims nor sought an extension of the discovery deadlines in order to attempt to obtain any such evidence. *See* NRCP 6(b) (permitting enlargements of time set by the Nevada Rules of Civil Procedure or by court order for good cause); NRCP 56(f) (permitting a district court to order a continuance to allow a party to obtain further discovery before deciding a motion for summary judgment under appropriate circumstances). In the absence of any evidence demonstrating the existence of a genuine issue of material fact or a request for additional

time to obtain such evidence, we conclude that the district court correctly granted summary judgment in favor of Kazel.³

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Charles David Landan
Roberts Stoffel Family Law Group
Eighth District Court Clerk

³As we conclude that summary judgment was proper for the reasons discussed herein, we need not address Landan's contention that the district court improperly afforded Kazel a litigation privilege.