IN THE COURT OF APPEALS OF THE STATE OF NEVADA

W. DOUGLAS HITT, AN INDIVIDUAL,
Appellant,
vs.
DONNA RUTHE, AN INDIVIDUAL; AND TODAY'S REALTY CORPORATION, A NEVADA CORPORATION,
Respondents.

No. 65239

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court summary judgment in an action for intentional interference with prospective business advantage. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

According to the district court complaint, non-parties Jeff Guinn and Kent Barry offered to purchase a piece of real property owned by appellant W. Douglas Hitt, with non-party Scott Ruthe to act as the real estate agent for the transaction.[1] Before Hitt could accept the offer, respondent Donna Ruthe[2] threatened to stop doing business with Guinn and Barry if they went through with the transaction while Scott was

[1]Scott Ruthe was a party to the district court action but is not a party to this appeal.

[2]Because Donna Ruthe and Scott Ruthe share a last name, we will refer to them by their first names for clarity.

15-900680

involved. When Hitt, through Scott, subsequently asked whether the offer was still open, Guinn and Barry told him it was not.

More than five years later, Hitt filed the underlying district court complaint, alleging that Donna, on behalf of herself and respondent Today's Realty Corporation (collectively referred to as Donna), had intentionally interfered with the transaction, resulting in the loss of the sale for Hitt.[3] Hitt also sought punitive damages as to this claim. The district court ultimately granted summary judgment to Donna on alternative grounds, which we address in turn below.

The district court's initial basis for granting summary judgment was that Hitt failed to allege, or present evidence showing, the existence of a valid contract. Insofar as Hitt's complaint stated a claim for intentional interference with contractual relations, the district court's dismissal of this claim was correct because "a valid and existing contract" is a necessary element of an intentional interference with contractual relations claim, and Hitt did not allege the existence of a valid contract. *See Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1290 (1989) (explaining that the first element of a claim for intentional interference with contractual relations is "a valid and existing contract"). We therefore affirm the portion of the order granting Donna summary judgment as to Hitt's intentional interference with contractual relations claim.

In opposing summary judgment in the district court, however, Hitt argued he had pleaded intentional interference with contractual

---

[3]The complaint also included a claim for defamation. The district court granted Donna summary judgment as to that claim, and that ruling is not challenged on appeal. We therefore necessarily affirm the grant of summary judgment on the defamation claim.

relations and intentional interference with prospective economic advantage in the alternative. Nevertheless, the district court's order did not address the separate tort of intentional interference with prospective economic advantage, which does not require a valid and existing contract, even though it granted summary judgment as to the entirety of Hitt's complaint. *See Leavitt v. Leisure Sports Inc.*, 103 Nev. 81, 88, 734 P.2d 1221, 1225 (1987) (identifying the elements of an interference with prospective economic advantage claim).

On appeal, Hitt contends that he stated a claim for intentional interference with prospective business advantage. Donna, on the other hand, argues the district court correctly construed the complaint as stating a claim only for intentional interference with contractual relations. Alternatively, Donna contends that, to the extent Hitt attempted to state a claim for intentional interference with prospective business advantage, the claim was properly dismissed because he failed to allege she intended to harm him.

Having reviewed the complaint and the other documents before us, we conclude Hitt sufficiently stated a claim for intentional interference with prospective economic advantage, as the facts he pleaded were consistent with the elements of such a claim, including the element of intent. *See W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) ("A complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought."); *Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nev.*, 106 Nev. 283, 287-88, 792 P.2d 386, 388 (1990) (explaining that the intent element for an intentional interference with prospective

economic advantage claim does not require a specific intent to hurt the plaintiff, but instead, requires only an intent to interfere with the prospective contractual relationship). Thus, the district court erred by granting summary judgment based on the lack of a contract without separately considering Hitt's intentional interference with prospective economic advantage claim. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that a district court summary judgment is reviewed de novo on appeal).

The district court alternatively granted summary judgment based on the statute of limitations, finding that, at the latest, Hitt knew or should have known about his claim by 2009. The parties agree Hitt's claim was subject to the three-year statute of limitations set forth in NRS 11.190(3)(c).[4] But Hitt contends that he did not learn of the claims until 2011, making his October 2013 complaint timely under the discovery rule. Nonetheless, Donna argues summary judgment was proper because Hitt failed to present any evidence with regard to when he discovered his claim

---

[4]In *Stalk v. Mushkin*, 125 Nev. 21, 27, 199 P.3d 838, 842 (2009), the Nevada Supreme Court determined that the three-year statute of limitations set forth in NRS 11.190(3)(c) applies to claims for intentional interference with prospective economic advantage. Two years later, in *In re Amerco Derivative Litigation*, 127 Nev. ___, ___, 252 P.3d 681, 703 (2011), the court stated that the four-year limitations period set forth in NRS 11.190(2)(c) applies to such claims without addressing *Stalk*. Because Hitt's arguments are all based on the three-year statute of limitations, however, he has waived any arguments based on the four-year limitations period and thus, the apparent conflict between the *Stalk* and *Amerco* decisions is not before us on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. ___, ___ n.3, 252 P.3d 668, 672 n.3 (2011) (finding issues not raised in a party's opening brief are waived).

or otherwise rebut her evidence showing he learned of the facts underlying his claim by 2009.

In the district court, Donna's evidence showed that the underlying facts were alluded to in a counter-complaint filed in an action to which neither Hitt nor Scott were parties. Although the evidence demonstrated that Scott had read the counter-complaint sometime around 2010, nothing was presented to show that Hitt even knew about the counter-complaint, much less that he had read it or was aware that the allegations in it referred to the proposed transaction for the sale of his land.

Because the complaint underlying the present action alleged that Hitt did not learn of his claim until 2011 and Donna did not present any evidence supporting her argument to the contrary, an issue of fact existed as to when the statute of limitations began to run. *See Siragusa v. Brown*, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998) (holding that "[w]hen the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action is a question of fact for the trier of fact," such that "the time of discovery may be decided as a matter of law only where uncontroverted evidence proves [when] the plaintiff discovered or should have discovered the fraudulent conduct" (alteration in original) (internal quotation marks omitted)); *Oak Grove Investors v. Bell & Gossett Co.*, 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983) (placing the burden of demonstrating the absence of a genuine issue of material fact as to when a party discovered or should have discovered the facts underlying a claim on the party seeking summary judgment on statute of limitations grounds), *disapproved on other grounds by Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Under

these circumstances, the district court erred by granting summary judgment based on the statute of limitations. *See Wood*, 121 Nev. at, 729, 121 P.3d at 1029.

Accordingly, we reverse the portion of the district court's order granting summary judgment on Hitt's intentional interference with prospective economic advantage claim and remand this matter to the district court for proceedings consistent with this order.[5]

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Rob Bare, District Judge
William C. Turner, Settlement Judge
Warm Springs Law Group
Knudson Law Group P.C.
Keating Law Group
Pico Rosenberger
Eighth District Court Clerk

---

[5]As the district court did not separately address Hitt's request for punitive damages, and apparently dismissed it based solely on the failure of the intentional interference claim, we necessarily reverse the dismissal of the request for punitive damages as well.