

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID HOWELL,
Appellant,
vs.
BEST VALUE LODGE; KATIE DOE;
DONNY DOE; AND ROBIN DOE,
Respondents.

No. 69578

FILED

AUG 30 2016

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting judgment on the pleadings and dismissing a complaint in a landlord-tenant action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant David Howell was renting an apartment from respondent Best Value Lodge when he was taken into police custody. After being released, Howell sued Best Value Lodge and certain of its owners and employees for failing to dispose of his property as required by NRS 118A.460 (providing how a landlord may dispose of a former tenant's personal property that was abandoned, as that term is defined by NRS 118A.030, or left after the tenant was evicted, without incurring civil or criminal liability). After answering the complaint, respondents moved for judgment on the pleadings, arguing both that NRS 118A.460 did not apply and that Howell's girlfriend had apparent authority to take possession of his personal property. Respondents supported their motion with a letter from Howell they claimed gave his girlfriend apparent authority to pick up his items, a signed statement from the girlfriend that she had retrieved the property, and an affidavit from the owner of Best Value Lodge. Over Howell's opposition, the district court granted the motion for judgment on

the pleadings, without including a statement of undisputed facts or any conclusions of law, and dismissed Howell's complaint. This appeal followed.

Judgment on the pleadings is proper when, as determined from the pleadings, the material facts are not in dispute and the moving party is entitled to judgment as a matter of law. *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). If, however, a party presents matters outside the pleadings, and the court does not exclude them, "the motion shall be treated as one for summary judgment and disposed of as provided in [NRCP] 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by [NRCP] 56." NRCP 12(c).


In this case, the district court relied on the additional documents submitted by respondents in support of their motion for judgment on the pleadings in rendering its decision without informing the parties that it was converting the motion into one for summary judgment. In failing to inform the parties, the district court failed to allow Howell the opportunity to present any additional relevant materials. The court then inappropriately considered the attached documents, without identifying any undisputed facts regarding the same, while still purportedly deciding the case under a judgment on the pleadings standard. Because the district court improperly considered matters outside the pleadings, we cannot review the district court's order as one granting judgment on the pleadings, *see id.*, and its failure to adequately convert the motion to one for summary judgment precludes us from properly reviewing the order under a summary judgment standard. Indeed, even if the court had given the parties the opportunity to submit material evidence, we would still not be able to review the district court's order as it fails to set forth "the


undisputed material facts and legal determinations” supporting its decision.¹ See NRCP 56(c) (requiring the court to state the legal and factual reasons for its grant of summary judgment); see also *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 656-57, 173 P.3d 734, 746 (2007) (reversing and remanding a portion of a district court order granting summary judgment because the order failed to set forth the undisputed material facts and legal determinations supporting its decision on the issue in question).

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

¹The absence of the required statement of undisputed facts and legal conclusions is especially problematic in a case such as this, where there appear to be questions of fact regarding the application of NRS 118A.460 and the alleged apparent authority of Howell’s then-girlfriend to retrieve his property. See *Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well-suited to make factual determinations in the first instance.”).

²Because of this decision, we deny as moot Howell’s August 16, 2016, request to submit.

cc: Hon. Patrick Flanagan, District Judge
David Howell
Glade L. Hall
Washoe District Court Clerk