

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MEHRPOUR SAMIMI; AND JANET  
SAMIMI,  
Appellants,  
vs.  
COLLEEN GREEN,  
Respondent.

No. 68674

**FILED**

OCT 12 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY S. Young  
DEPUTY CLERK

*ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING*

This is an appeal from a default judgment in a breach of contract action. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

The district court awarded appellants a default judgment on their complaint against respondent alleging breach of contract, conversion of personal property, unjust enrichment, fraud and elder abuse. The court also found that respondent was entitled to offset certain amounts against the award and reduced the judgment accordingly. This appeal followed.

On appeal, appellants first argue that the district court failed to consider their claim to ownership of the property. But a review of appellants' complaint demonstrates that the district court properly concluded that appellants did not assert a quiet title claim or otherwise seek legal title to the property in their complaint. Thus, the court could not grant relief on such a claim. *See* NRCP 54(c) ("A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment . . ."); *Keyes v. Nev. Gas Co.*, 55 Nev. 431, 435-36, 38 P.2d 661, 663 (1934) (explaining that when an answer has not been filed, the court is limited to granting the relief sought in the complaint).

Instead, appellants' complaint requested a declaratory judgment recognizing their equitable interest in and a lien on the property, in addition to money damages. In entering the default judgment, the district court explained that, it would not grant equitable relief, but instead, would grant them a money judgment to compensate them for any damages they sustained.<sup>1</sup> On appeal, appellants do not present any cogent argument or relevant authority to explain why the district court was required to grant them an equitable interest in the property, rather than award them a monetary judgment to compensate them for their damages. Thus, we decline to consider this point further. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that the court need not consider claims that are not cogently argued or supported by relevant authority).

Appellants alternatively argue that the district court was required to award them money paid as the down payment and mortgage payments on the property as damages for their breach of contract claim. They also argue that the district court improperly failed to award them damages on their elder abuse claim.

In this regard, it was appellants' responsibility to prove their damages at the evidentiary hearing. See *Kelly Broad. Co. v. Sovereign Broad., Inc.*, 96 Nev. 188, 193, 606 P.2d 1089, 1092 (1980) ("Where a default judgment is neither for a sum certain, nor for a sum which can by computation be made certain, the plaintiff must prove up his damages."),

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<sup>1</sup>Appellants contend that the district court stated that it could not award them any relief related to their real property claims. But the portion of the appendix appellants cite in support of this statement demonstrates that the district court explained that it was not considering who owned the home, but that it would consider any money damages arising out of appellants' claims.

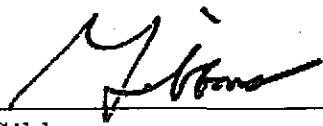
*superseded by statute on other grounds as stated in Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 741-43, 192 P.3d 243, 253-55 (2008). The record demonstrates that appellants submitted evidence to the district court to prove their damages, and the district court relied on that evidence in reaching its decision. But the evidence presented to the district court has not been provided to this court on appeal. As a result, we must presume the district court properly calculated appellants' monetary damages based on the evidence that was before it. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").


Appellants also argue that the district court improperly allowed respondent to submit evidence that any amounts she owed to appellants were subject to offsets because she failed to file a counterclaim or state any affirmative defenses and because allowing the offsets violated the legal requirement that there be mutual indebtedness in order to allow an offset. But our review of the documents before us demonstrates that appellants did not raise either of these arguments before the district court, and thus, we do not consider them on appeal. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

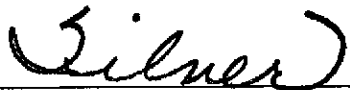
And as to their argument that allowing the offsets constituted a double recovery, the district court determined what offsets were appropriate based on the evidence presented by the parties. But, as discussed above, that evidence has not been presented to this court. As a result, we necessarily presume it supports the district court's decision. See *Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

Finally, appellants contend that the district court failed to consider their claim for punitive damages based on fraud. Here, certain of the district court's comments indicated that it did not believe punitive damages could be awarded in a default proceeding, and nothing in the district court's order indicates that it considered appellants' punitive damages claim at all. While no party is entitled to punitive damages as a matter of right, such damages may be awarded in a default proceeding if the plaintiff provides evidence to show that a basis for them exists. See *Kelly Broad.*, 96 Nev. at 194, 606 P.2d at 1093. Because the district court entered a default judgment against respondent on appellants' fraud claim and ruled that appellants were not entitled to punitive damages in a default proceeding, we reverse the district court's order only to the extent that it denied punitive damages, and we remand this matter to the district court for further proceedings consistent with this order.<sup>2</sup> The district court's order is affirmed in all other respects.

It is so ORDERED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>2</sup>In reversing on this basis, we make no comment on whether punitive damages are appropriate in this case, as that is a matter within the district court's discretion. See *Kelly Broad.*, 96 Nev. at 194, 606 P.2d at 1093.

cc: Hon. Scott N. Freeman, District Judge  
Molsby & Bordner, LLP  
Colleen Green  
Washoe District Court Clerk