IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MORENO P. DELA ROSA, JR., AN INDIVIDUAL; AND PATIENT CARE HOME HEALTH SERVICES, INC., A NEVADA CORPORATION,
Appellants,
vs.
MARIBETH TRAINOR, AN INDIVIDUAL,
Respondent.

No. 68891

FILED

MAR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

MORENO P. DELA ROSA, JR., AN INDIVIDUAL; AND PATIENT CARE HOME HEALTH SERVICES, INC., A NEVADA CORPORATION,
Appellants,
vs.
MARIBETH TRAINOR, AN INDIVIDUAL,
Respondent.

No. 69774

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court judgment on a jury verdict in a contract and torts action and from post-judgment orders denying a new trial and granting attorney fees. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Respondent Maribeth Trainor sued appellants Moreno P. Dela Rosa and Patient Care Home Health Services, Inc. (collectively referred to where appropriate as Dela Rosa), asserting claims for, as relevant here, fraud in the inducement and unjust enrichment. Thereafter, Patient Care filed counterclaims against Trainor for conversion and unjust enrichment.[1]

[1]Dela Rosa also filed counterclaims, but those were resolved on summary judgment, and that decision is not challenged in this appeal.

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The jury ultimately found for Trainor on all counts, and Patient Care moved for a new trial on its counterclaims under NRCP 59(a)(5). The district court denied that motion, and that decision, together with the jury's verdict, is the subject of the appeal in Docket No. 68891. Trainor later moved for attorney fees, and the district court granted that motion. And that decision is the subject of the appeal in Docket No. 69774.

Initially, Dela Rosa argues the district court improperly refused to allow testimony at trial regarding intentional torts Trainor's husband allegedly committed against him. When the court refused to allow this testimony at trial, Dela Rosa argued only that the testimony should be allowed because the door to it had been opened by earlier testimony. But on appeal, Dela Rosa does not argue the door was opened, instead asserting that the district court wrongly believed at trial that it had previously granted a motion in limine excluding the testimony. As nothing in the appendix demonstrates that Dela Rosa argued below that the district court's decision was based on an erroneous belief that it had already excluded the testimony, he waived that argument, and, thus, we do not address it 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 . . . is deemed to have been waived and will not be considered on appeal."). We also do not address the argument that the door to the testimony was opened as Dela Rosa has not pursued that issue on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Thus, the district court's exclusion of this testimony at trial does not provide a basis for reversal of the district court's decision.

Dela Rosa next challenges the jury's verdict in favor of Trainor on her fraud in the inducement and unjust enrichment claims. We will not reverse a jury's verdict unless it is unsupported by substantial

evidence or clearly erroneous. *See Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009) (discussing the standard of review for a jury verdict). As to fraud in the inducement, Dela Rosa identifies testimony that he asserts supports his position that no fraud took place, but he does not cite any authority regarding the legal standard for fraud in the inducement or otherwise argue or explain why the trial testimony did not establish liability under that standard. Consequently, we also decline to consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not address issues that are not supported by cogent argument or relevant legal authority).

And as to unjust enrichment, Dela Rosa asserts that Trainor did not have an employment agreement or other contract demonstrating that she was entitled to compensation for her services. But nothing in the unjust enrichment standard precludes liability in the absence of an express agreement between the parties to a dispute. *See LeasePartners Corp. v. Robert L. Brooks Tr.*, 113 Nev. 747, 756, 942 P.2d 182, 187 (1997) ("The doctrine of unjust enrichment . . . applies to situations where there is no legal contract but where the [defendant] is in possession of money or property which in good conscience and justice he should not retain . . . ."). Moreover, given Trainor's testimony that she performed services for Patient Care without receiving compensation, the jury could have found that she conferred a benefit on Dela Rosa, he appreciated the benefit, and it was inequitable for him to retain the benefit without paying Trainor for it. *See id.* (setting forth the elements of an unjust enrichment claim); *see also Allstate*, 125 Nev. at 308, 212 P.3d at 324 (explaining that a jury verdict will be upheld if it is supported by substantial evidence); *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424-25, 851 P.2d 423, 424 (1993) (defining substantial evidence as "that which a

reasonable mind might accept as adequate to support a conclusion"). Thus, we affirm the jury's verdict for Trainor on her fraud in the inducement and unjust enrichment claims.[2]

With regard to the district court's denial of a new trial, Patient Care argues the jury manifestly disregarded the court's instructions by finding for Trainor on its counterclaims. *See* NRCP 59(a)(5) (permitting a new trial when there has been a "[m]anifest disregard by the jury of the instructions of the court"). In this regard, "the question is whether we are able to declare that, had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached." *See Weaver Bros., Ltd. v. Misskelley*, 98 Nev. 232, 234, 645 P.2d 438, 439 (1982). Trainor contends that the jury could have reached its verdict based on evidence in the record showing that she was not unjustly enriched and that she did not act wrongfully or in derogation of Patient Care's rights. *See Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) (explaining that unjust enrichment occurs when a person obtains a benefit under circumstances that would make it inequitable to retain the benefit); *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 910, 193 P.3d 536, 542 (2008) (providing that conversion requires a wrongful exertion of dominion over another's personal property in derogation of that person's rights).

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[2]Dela Rosa's failure to provide this court with complete trial transcripts adds further support to our decision, as we presume that the missing portions of the transcripts supported the jury's verdict. *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.").

We have considered the parties' arguments on these issues, but, in light of Patient Care's failure to provide complete trial transcripts in its appendix, we cannot fully evaluate whether the jury could have reached its verdict on Patient Care's counterclaims. As a result, we presume that the missing portions of the transcripts supported the denial of the motion for a new trial. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). And, thus, we necessarily affirm the district court's decision in that regard. *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 611 (2014) (reviewing an order denying a motion for a new trial for an abuse of discretion).

Finally, as to attorney fees, Dela Rosa's argument that the district court failed to consider good faith under *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983), fails because the court expressly addressed each of the *Beattie* factors in its written order.[3] Dela Rosa also contends that the district court awarded Trainor an excessive amount of attorney fees. Below, Trainor submitted billing statements to support her request for attorney fees, and while we cannot discern from the documents before us whether the amount of fees the district court awarded was based on these billing statements, because Dela Rosa failed to include the billing statements in his appendix, we must presume that

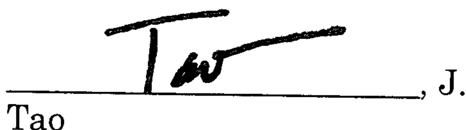
[3]Dela Rosa's arguments refer to a hearing transcript and subsequent minute ruling but do not address the district court's written order at all.

they supported the attorney fees award.[4] *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135. Thus, Dela Rosa has not demonstrated that the district court's decision was an abuse of discretion, and, therefore, we affirm the attorney fees award. *See Gunderson*, 130 Nev. at ___, 319 P.3d at 615 (providing that orders with regard to attorney fees are reviewable for an abuse of discretion).

As Dela Rosa has not demonstrated that reversal is warranted as to any of the district court's decisions, we

ORDER the judgment of the district court AFFIRMED.

_______________, C.J.
Silver


_______________, J.
Tao

_______________, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Lansford W. Levitt, Settlement Judge
Kirk T. Kennedy
Hutchison & Steffen, LLC
Eighth District Court Clerk

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[4]Insofar as Dela Rosa asserts that Trainor should have provided this court with her billing statements, his assertion is unavailing, as the appellant is responsible for making an adequate appellate record. *See* NRAP 30(b)(3); *Cuzze*, 123 Nev. at 603, 172 P.3d at 135 (discussing the appellant's responsibility to provide an adequate appellate record). Moreover, although Dela Rosa asserts in his reply brief that the district court improperly considered pre- and post-trial work performed by Trainor's counsel, he waived that argument by failing to raise it in his opening brief. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3 ("Issues not raised in an appellant's opening brief are deemed waived.").