

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAY SHARPE, AN INDIVIDUAL; AND
SHARPE INVESTMENTS, INC., A
DOMESTIC CORPORATION,
Appellants,

vs.

ALISHA GRUNDY, AN INDIVIDUAL;
AND TRI STATE TOWING AND
RECOVERY, INC., A CORPORATE
ENTITY,
Respondents.

GENA JOHNSON,
Appellant,

vs.

ALISHA GRUNDY, AN INDIVIDUAL;
AND TRI STATE TOWING AND
RECOVERY, INC., A CORPORATE
ENTITY,
Respondents.

No. 68570 ✓

FILED

MAY 01 2017

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

No. 68600

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

This is an appeal from a grant of summary judgment in favor of respondent Alisha Grundy, awarding her title to seven cars, five real properties, and \$3,000,000 in damages.¹ Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In 2013 Sharpe, Raymond Sharpe Investments, Inc. and Gena Johnson (“Appellants”), sued Grundy for towing away seven cars without their permission from a property Sharpe owned. The cars were each titled

¹The Honorable Abbi Silver, Chief Judge, did not participate in the decision in this matter.

to one of the appellants. Grundy counterclaimed and moved for summary judgment, asserting various tort claims, and that she had superior title in the seven cars, as well as superior title in five real properties. Appellants did not oppose, and the district court granted summary judgment, awarding Grundy \$3,000,000 in compensatory and punitive damages relating to the tort claims and quieting title to the cars and real property. Sharpe later filed a NRCP 60(b) motion, claiming he did not file an opposition because he did not receive notice of the motion. On appeal, appellants argue the district court improperly granted summary judgment and erred in denying NRCP 60(b) relief.²

This court reviews the grant of summary judgment *de novo*, with no deference to the district court's findings. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate where the pleadings and other evidence presented, when viewed in the light most favorable to the nonmoving party, demonstrate that the moving party is entitled to judgment as a matter of law and that no genuine issues of material fact exist. *Id.*

Grundy's civil assault and battery counterclaims

Sharpe's criminal conviction for assault and battery is sufficient to prove liability for those civil actions. NRS 41.133.³ However, the Nevada Supreme Court has held that while NRS 41.133 imposes civil

²We do not recount the facts except as necessary to our disposition.

³We note that Grundy failed to provide the judgment of conviction with her motion, but for summary judgment we review the entire record *de novo*, and the record reveals the convictions. *See e.g., Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 266, 849 P.2d 310, 311.

liability, it does not establish the amount of damages. *See Cromer v. Wilson*, 126 Nev. 106, 111, 225 P.3d 788, 791 (2010) (“[A]pplication of NRS 41.133 allows a party to avoid having to prove liability, but does not provide an automatic recovery of damages, and a plaintiff must still establish damages.”).

There is nothing in the district court’s order, Grundy’s motion, her declaration, or the record at large to support \$1,000,000 in compensatory damages, and little to support \$2,000,000 in punitive damages. The closest Grundy came was stating in her declaration that “[t]he acts were done willfully and intentionally, and RAY SHARPE should be ordered to pay punitive damages to met [sic] of One Million Dollars.”

Thus, while Sharpe’s criminal conviction is sufficient to establish liability for civil assault and battery and related tort claims, the court erred by granting \$1,000,000 in compensatory damages without making any factual findings to support the award and \$2,000,000 in punitive damages without the findings required by NRS 42.005(1). *See* NRCP 56(c) (“An order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.”). Therefore, the grants of summary judgment on the civil assault and battery and related tort claims are affirmed as to liability, but the damages award is reversed and remanded for the district court to properly establish the amount.⁴

Grundy’s property counterclaims

⁴We have considered Sharpe’s remaining argument that the motion was untimely and find it unpersuasive, as the deadline for dispositive deadlines was merely “suggested.”

In her motion for summary judgment, Grundy also requested the court quiet title to five real properties and seven cars, asserting the appellants converted her property and that she had an equitable lien on the above property because she provided the purchase money for the property.⁵

Although Grundy asserted an equitable lien theory of relief, the district court instead granted a constructive trust—where actual title of the property transfers to the plaintiff. *See Namow Corp. v. Egger*, 99 Nev. 590, 593, 668 P.2d 265, 267 (1983) (“When a thief embezzles money and uses it to purchase property, he or she can be required to convey the property to the person from whom the money was taken, by means of a constructive trust.”). Thus, despite the district court purporting to grant an equitable lien, no such lien was granted.⁶ The court also granted storage fees to Grundy for keeping the cars on the property.

⁵We decline to address Grundy’s conversion counterclaim because a necessary element of conversion is that the plaintiff had “title or rights” to the property in question. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 910, 193 P.3d 536, 542 (2008). Because we reverse the grant of summary judgment on all of Grundy’s property counterclaims, the ownership issue remains to be litigated on remand.

⁶Even if the court awarded an equitable lien instead of a constructive trust, such a remedy would have been improper. In Nevada, equitable liens have their foundation in contract law, and provide a remedy for the plaintiff to enforce an express or implied contract by acting upon a piece of property. *Union Indem. Co. v. A.D. Drumm, Jr., Inc.*, 57 Nev. 242, 70 P.2d 767, 768 (1937). Grundy alleged no express contract creating such a lien, and made no arguments that she intended the transfer of purchase funds to Sharpe to create a lien. Thus, Grundy was not entitled to summary judgment on an equitable lien.

“In Nevada, imposition of a constructive trust requires: ‘(1) [that] a confidential relationship exists between the parties; (2) retention of legal title by the holder thereof against another would be inequitable; and (3) the existence of such a trust is essential to the effectuation of justice.’”). See *Waldman v. Maini*, 124 Nev. 1121, 1131, 195 P.3d 850, 857 (2008).

Sharpe asserts that Grundy did not provide purchase money for the cars or real property, and provided testimony from a separate case where Grundy testified that Sharpe always paid her back for funds she lent him to purchase cars, and that she voluntarily quitclaimed the Gagnier property to Sharpe because she could no longer afford the payments.⁷

When taking this evidence in the light most favorable to Sharpe, as we must, a reasonable jury could conclude that Grundy did not provide the funds to purchase the cars and real properties, rendering summary judgment on the property counterclaims improper. See *Kopicko v. Young*, 114 Nev. 1333, 1336, 971 P.2d 789, 790 (1998) (“A genuine issue of material fact [precluding summary judgment] exists when a reasonable jury could return a verdict for the non-moving party.”); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (“When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party.”). Thus we reverse the grant of summary judgment on Grundy’s

⁷Again, we recognize this evidence did not come to light until Sharpe’s NRCP 60(b) motion, but for summary judgment we review the entire record de novo. See e.g., *Caughlin*, 109 Nev. at 266, 849 P.2d at 311.

conversion and equitable lien claims. As a result, we also necessarily reverse the court's award of a constructive trust and storage fees.⁸

Grundy's alter ego claim

Grundy also sought to pierce the corporate veil by alleging "alter ego." To maintain a claim for alter ego, the plaintiff must prove by a preponderance of the evidence that:

- (1) The corporation must be influenced and governed by the person asserted to be its alter ego[;]
- (2) There must be such unity of interest and ownership that one is inseparable from the other;
- and (3) The facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice.


Truck Ins. Exch. v. Palmer J. Swanson, Inc., 124 Nev. 629, 635, 189 P.3d 656, 660 (2008).

Here, Grundy stated in her motion and declaration that Sharpe and Johnson comingled funds, used assets for their personal use, and improperly capitalized Sharpe Investments, demonstrating a unity of interests. No other evidence was provided, and she did not explain her factual basis for these assertions. Grundy failed to meet her burden to demonstrate that she was entitled to summary judgment on this claim as a matter of law. *See* NRCP 56(c). Thus, the grant of summary judgment

⁸We have also considered Sharpe's argument that it was error for the court to quiet title in Grundy's name under NRS 40.090, Nevada's adverse possession statute. NRS 40.090 does indeed require certain parties to be joined before a court can quiet title in an adverse possession action, but Grundy was not seeking title under an adverse possession theory; therefore this statute is irrelevant.

on this claim is reversed and remanded to the district court for further proceedings.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁰


_____, J.
Tao


_____, J.
Gibbons

⁹Reversal on this issue is appropriate regardless of whether Johnson or Sharpe opposed Grundy's motion for summary judgment—the plain language of NRCP 56(c) requires that the movant prove it is entitled to judgment as a matter of law, and NRCP 56(e) allows a court to enter summary judgment without opposition only “if appropriate.” Although EDCR 2.20(e) allows a court to grant an unopposed motion, that discretion cannot overwrite the clear requirements of the NRCP. See NRCP 83 (“Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing its practice *not inconsistent with these rules.*”) (emphasis added).

¹⁰In light of our disposition it is unnecessary to reach the merits of Sharpe's NRCP 60(b) claim, as summary judgment was improperly granted on Grundy's counterclaims that did not arise from Sharpe's criminal conviction, regardless of whether he received notice or not. In any event, this court would have been unable to determine whether the district court abused its discretion because the court failed to make any findings in resolving the motion. See *Lioce v. Cohen*, 124 Nev. 1, 24–25, 174 P.3d 970, 985 (2008) (Reversing the denial of a motion for a new trial because “there is no reasoning for the district court's decision, we are unable to decide whether it abused its discretion in denying Lioce's motion for a new trial.”).

cc: Hon. Joseph Hardy, Jr., District Judge
Thomas Michaelides
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EAD Law Group LLC
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Eighth District Court Clerk