

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RON N. BRADY, SR.; AND PREMIER
MANAGEMENT SERVICES, INC.,
Appellants,
vs.
DOTAN Y. MELECH, PERSONALLY
AND IN HIS FIDUCIARY CAPACITY
AS "RECEIVER",
Respondent.

No. 69202

FILED

APR 28 2017

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

ORDER OF AFFIRMANCE

Ron N. Brady and Premier Management Services ("PMS") (collectively appellants) appeal from a district court order granting a motion for summary judgment in a torts action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Bank of America initiated a judicial foreclosure action involving the Casa Salvatore Apartments ("CSA"), and Respondent Dotan Melech was appointed as receiver. The court order appointing Melech stated that he had unlimited access to the property and the authority to deny access to Brady or any of his agents. Brady claimed that he had personal property located in storage at CSA and PMS—of which Brady is president—alleged that it stored various tools and equipment at CSA. Below, appellants claimed that during the receivership, Melech prevented Brady and his agents from retrieving various tools, equipment, and personal items stored at CSA; and that Melech ultimately removed, retained, or disposed of the personal property, resulting in appellants' items being stolen or lost. Nevertheless, following the foreclosure sale,

Brady acknowledged that he was able to recover most, but not all of the property stored at CSA.

Nearly a year after the foreclosure sale, appellants sued Melech in a separate action alleging that Melech was responsible for any missing items or lost income due to his previous retention of appellants' property. Following the close of discovery, the district court granted Melech's motion for summary judgment.¹ On appeal, appellants argue that the district court erred by granting summary judgment on his conversion claim² and by finding that Melech had absolute immunity.³ We

¹We do not recount the facts except as necessary to our disposition.

²The district court granted summary judgment on all eight of appellants' claims. On appeal, appellants argue only that the district court applied an incorrect legal standard when determining whether summary judgment was warranted as to their conversion claim. Appellants fail to provide relevant authority or analysis regarding whether summary judgment was properly granted as to the other causes of action, instead arguing in a conclusory fashion that the district court "hinged" its entire order on its determination concerning the conversion claim. As appellants failed to provide relevant authority or cogent argument regarding these seven causes of action, we need not consider whether the district court erroneously granted Melech's motion for summary judgment on these claims. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that this court need not consider claims that are not cogently argued or supported by relevant authority). Even if we were to address an argument not cogently presented, our review of the record suggests that Melech met his burden of demonstrating that he was entitled to judgment as a matter of law, and appellant has failed to demonstrate that any genuine issues of material fact exist that made summary judgment improper.

³Appellants argue that Melech exceeded his authority as a receiver, alleging that he failed to act neutrally by converting their property. Having carefully reviewed the order, we conclude that the district court did not err by considering the scope of Melech's authority as a receiver in

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conclude that appellants failed to establish that the district court erred and therefore affirm the decision of the district court.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if "the pleadings and all other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Id.* (alteration in original) (footnote omitted) (quoting NRCP 56(c)). When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* "To establish entitlement to judgment as a matter of law, defendant need only negate one element of plaintiff's case[.]" *Harrington v. Syufy Enters.*, 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997).

"Whether a conversion has occurred is generally a question of fact for the jury." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000). "Conversion is 'a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.'" *Id.* (quoting *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958)). "[C]onversion generally is limited to those severe, major, and important interferences with the right to control

...continued

determining whether Melech's control over appellants' property was "wrongful" for the purposes of conversion, and disagree that this constituted a finding of "absolute immunity." But this court need not address the immunity issue in light of our conclusion regarding the merits of appellants' conversion claim because, on appeal, appellants fail to argue any other theory demonstrating how Melech exceeded his authority.

personal property that justify requiring the actor to pay the property's full value." *Edwards*, 122 Nev. at 328-29, 130 P.3d at 1287 (footnote omitted).

Having carefully reviewed the record provided, and taking all inferences in a light most favorable to appellants, we conclude that summary judgment on the conversion claim was appropriate. Appellants failed to provide evidence identifying the items that were allegedly converted. Further, as appellants failed to disclose the items they allege were converted, they failed to comply with NRCP 16.1(c)'s disclosure requirement and thus cannot satisfy their burden of demonstrating damages. Accordingly, appellants have failed to show a genuine issue of material fact regarding whether Melech severely or wrongly interfered with any items on the property.⁴


Additionally, instead of citing to the record to demonstrate that there was evidentiary support for this claim, Brady simply asserts that at trial he will present witness testimony that supports his conversion claim. This assertion falls far short of demonstrating that a genuine issue of material fact exists. *See Cuzze v. Univ. & Comm. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) (footnote omitted) ("[I]n order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence,

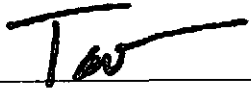
⁴In fact, at Brady's deposition, he testified that he did not know what evidence he would present that would have demonstrated that Melech lost, destroyed or altered any items.


Further, we note that the district court correctly observed that appellants also failed to comply with NRCP 16.1(a)(1)(C), which requires a party provide a computation of damages and any evidence "not privileged or protected from disclosure, on which such computation is based[.]"

introduce specific facts that show a genuine issue of material fact.”).⁵
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

⁵Melech requests that this court sanction appellants' counsel for his failure to comply with NRAP 28(a)(8) or NRAP 28(e)(1). Appellants' former counsel was previously warned by the Nevada Supreme Court that failure to comply with NRAP may result in sanctions. Here, appellants provided an opening brief containing nearly twenty pages of factual assertions, but provided only fifteen record citations. Furthermore, several factual assertions contained within the opening brief are wholly unsupported by the available record. Based upon the failure to support each factual assertion with a citation to the record this court could elect to assess attorney fees or other monetary sanctions against appellants' counsel. See NRAP 28(j). However, based upon our determination that summary judgment was properly granted due to appellants' failure to provide evidentiary support of their claims, we conclude that sanctions are not warranted in this instance. We take this opportunity to strongly remind counsel that "this court will not tolerate lackadaisical practices in the pursuit of appellate relief[.]" *Miller v. Wilfong*, 121 Nev. 619, 626, 119 P.3d 727, 732 (2005).

Additionally, we have considered all other arguments on appeal and conclude that they are unpersuasive.

cc: Hon. Michelle Leavitt, District Judge
Qualey Law Group
Bailus Cook & Kelesis
Eighth District Court Clerk