IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALGENE SUTHERLAND,
Appellant,
vs.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, A FOREIGN CORPORATION,
Respondent.

No. 71389

FILED

OCT 31 2017

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

ORDER OF AFFIRMANCE

Valgene Sutherland appeals from a short trial grant of summary judgment in a contract action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge; Cory M. Jones, Short Trial Judge.

Sutherland sued his insurance company, State Farm, for its handling of a car accident Sutherland was involved in. After investigating the accident, State Farm determined internally that Sutherland was at fault and settled with the occupants of the other vehicle. Sutherland sued State Farm for breach of contract and breach of the covenant of good faith and fair dealing (bad faith), arguing that State Farm denied him uninsured motorist (UM) benefits based on an erroneous conclusion that Sutherland was at fault—a conclusion that Sutherland argues State Farm would not have reached had it adequately investigated the accident.[1] State Farm moved for summary judgment before the short trial judge, asserting that Sutherland had no evidence that its investigation was unreasonable. State Farm also argued that Sutherland could not assert damages stemming from denied UM benefits because Sutherland mentioned the benefits for the first time in a motion for a third amended complaint, which the district court

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

denied. The short trial judge granted the motion for summary judgment, and Sutherland appeals both the order granting summary judgment and the order denying his motion to amend his complaint.

First, as to Sutherland's motion to amend, he argues that because the denial of uninsured motorist benefits was "intertwined" with his breach of contract and bad faith claims, he should not have been required to amend his complaint in the first place. We agree with Sutherland, but conclude that the issue is immaterial to the outcome of this appeal.

This court reviews the sufficiency of a pleading de novo. *Sadler v. Pacificare of Nev., Inc.*, 130 Nev. ___, ___, 340 P.3d 1264, 1266 (2014). Nevada is a "notice pleading" state, which requires only that plaintiffs set forth facts which would support a legal theory. *Liston v. Las Vegas Metro. Police Dept.*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995). Although Sutherland's complaint only vaguely pled the type and amount of damages he sought, this was not a case that required anything other than generalized pleading. *Compare* NRCP 8(a) (requiring that pleadings contain only a "(1) short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks"), *with* NRCP 9(b) (requiring that averments of fraud and mistake be stated with particularity), *and* NRCP 9(g) (requiring that special damages be specifically stated). Thus, Sutherland was under no obligation to particularly plead the loss of UM benefits by name, and furthermore he identified them as being among the damages sought in his opposition to State Farm's summary judgment motion. Consequently, the district court's disposition of the motion to amend—erroneous or not—has no effect on our review of the grant of summary judgment, because for purposes of the

instant appeal we accept that the loss of UM benefits was already included in the initial complaint. Because we conclude that Sutherland was under no obligation to move to amend his complaint in the first place, we need not decide whether the district court abused its discretion in denying the motion. *See Khoury v. Seastrand*, 132 Nev. ___, ___, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless.").

We turn next to State Farm's motion for summary judgment.[2] 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 of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* However, the nonmoving party is not entitled to rely on "gossamer threads of whimsy, speculation, and conjecture." *Id.* at 731, 121 P.3d at 1030 (internal quotation marks omitted).

Where, as here, the moving party does not bear the burden of production at trial, the party moving for summary judgment may satisfy its burden by either (1) providing evidence that negates an essential element of the nonmoving party's claim; or (2) by pointing to an absence of evidence to support the nonmoving party's claims. *Cuzze v. Univ. & Cmty. Coll. Sys.*

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[2]Sutherland argues that State Farm improperly filed the motion for summary judgment, but as this issue is raised for the first time on appeal, we need not address it. *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.").

of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). If the moving party meets this burden, then the nonmoving party must "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact" to defeat summary judgment. *Id.*

Below, State Farm met its initial summary judgment burden by arguing that Sutherland had no evidence of damages because Sutherland was required to prove damages as an element to both his breach of contract claim and bad faith claim. *See Contreras v. Am. Family Mut. Ins. Co.*, 135 F. Supp. 3d 1208, 1227 (D. Nev. 2015) (setting forth three elements of a breach of contract claim: the existence of a valid contract, breach, and damages); *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 796, 858 P.2d 380, 384 (1993) (holding that no bad faith claim will lie until the insured establishes "legal entitlement," meaning that the "insured must be able to establish fault on the part of the uninsured motorist which gives rise to the damages and to prove the extent of those damages" (internal quotation marks omitted)).[3] Thus, the burden shifted to Sutherland to "transcend the pleadings" and show there was a genuine dispute of material fact as to damages. *Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134.

Although Sutherland's complaint was sufficient to *raise* denied UM benefits as damages in his opposition to State Farm's motion for summary judgment, he nevertheless failed to meet his burden and

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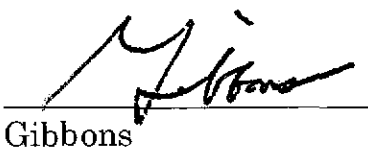
[3]Sutherland argues that he did not have to show damages for his bad faith claim under *Drennan v. Md. Cas. Co.*, 366 F. Supp. 2d 1002, 1007 (D. Nev. 2005). However, *Drennan* merely holds that a plaintiff need not obtain a monetary *judgment* against a tortfeasor before claiming an entitlement under a UM policy—but it still holds that a plaintiff must prove "the extent of the insured's damages." 366 F. Supp. 2d at 1006-07.

demonstrate a genuine issue of material fact. While Sutherland generally alleged that he was damaged by State Farm's denial of UM benefits, he did not articulate what value the denied benefits may be, or attach any other evidence to ground a damages award in, such as medical bills incurred as a result of the accident. Sutherland's claims of possible damages, without any actual evidence of damages, is purely speculative and therefore insufficient to defeat summary judgment. *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. Because Sutherland failed to meet his burden and establish a genuine dispute of material fact as to damages, theshort trial judge properly granted summary judgment on the claims in favor of State Farm.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Tao



_____, J.
Gibbons

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[4]The short trial judge granted summary judgment on the issue of damages because he believed that the district court's denial of Sutherland's motion to amend prevented Sutherland from discussing denied UM benefits. However, as discussed above, Sutherland's complaint was already sufficient to raise UM benefits as damages, which he did in his opposition to the motion for summary judgment. Nevertheless, because we review grants of summary judgment de novo, *Wood*, 121 Nev. at 729, 121 P.3d at 1029, and because we will affirm if the district court reached the right result, even for the wrong reason, *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 598, 245 P.3d 1198, 1202 (2010), we affirm the grant of summary judgment on this issue. Because we affirm summary judgment on the issue of damages—an essential element of Sutherland's claims—we need not reach the parties' remaining arguments for the other grounds on which the short trial judge granted summary judgment.

SILVER, C.J., concurring:

I concur in the result only.

Silver, C.J.

cc: Hon. Joseph Hardy, Jr., District Judge
Salvatore C. Gugino, Settlement Judge
Kirk T. Kennedy
Dennett Winspear, LLP
Eighth District Court Clerk