IN THE COURT OF APPEALS OF THE STATE OF NEVADA

M. PAUL WEINSTEIN, AN INDIVIDUAL,
Appellant,
vs.
GREENE INFUSO, LLP, A NEVADA LIMITED LIABILITY PARTNERSHIP,
Respondent.

No. 79957-COA

ORDER OF AFFIRMANCE

M. Paul Weinstein appeals from a district court order granting summary judgment in a civil case. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

In the proceedings below, respondent Greene Infuso, LLP (Infuso) sued Weinstein alleging, as relevant here, breach of contract based on Weinstein's failure to pay Infuso's invoices for attorney fees and costs pursuant to the parties' retainer agreement in an unrelated matter. Weinstein filed a cross-complaint alleging legal malpractice, negligent misrepresentation, intentional misrepresentation, and breach of contract, amongst other things. The district court dismissed Weinstein's cross-complaint, over his objection, concluding that Weinstein failed to state a claim pursuant to NRCP 12(b)(5). The district court then granted Infuso's motion for summary judgment, over Weinstein's objection, concluding that the fee agreement constituted a valid contract, that Weinstein admitted he did not perform under the contract, and that he admitted that he owed Infuso for the unpaid invoices. The district court also found that Infuso presented evidence demonstrating that the fees and costs he billed under

the agreement were reasonable and necessary, and that Weinstein failed to offer any evidence demonstrating that the fees and costs were unreasonable. Based on these facts, the district court found that Weinstein breached the contract by failing to pay Infuso, and concluded that there were no genuine issues of material fact remaining and that Infuso was entitled to judgment as a matter of law. This appeal followed.

On appeal, Weinstein challenges the district court's order arguing that the contract was not final and that there were genuine issues of material fact, such that summary judgment was improper. 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.* But general allegations and conclusory statements do not create genuine issues of fact. *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. Instead, "to defeat summary judgment, 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." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

Weinstein's assertion that the contract was not final because it did not include an integration clause and did not detail Infuso's alleged oral promises to Weinstein is without merit. Below, Weinstein offered an affidavit stating that Infuso made several promises whereby Weinstein would not have to pay the billed attorney fees in full, and that those

promises are not included in the contract. But "all prior negotiations and agreements are deemed merged in the written contract, and parol evidence is not admissible to vary or contradict its terms." *Tallman v. First Nat. Bank of Nev.*, 66 Nev. 248, 256-57, 208 P.2d 302, 306 (1949); *see also Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 381 (2012). Indeed, parol evidence is not admissible to change the terms of an unambiguous contract; rather, the district court can only consider parol evidence, as relevant here, if the contract is ambiguous or if it demonstrates "the existence of a separate oral agreement as to any matter on which a written contract is silent, and which is not inconsistent with its terms." *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913-14, 193 P.3d 536, 544-45 (2008) (internal quotation marks and alteration omitted); *see also* John D. Calamari & Joseph M. Perillo, Contracts § 3-2, "The Parol Evidence Rule," 135-36 (3d ed. 1987) (explaining that parol evidence cannot be admitted to contradict or re-write the plain words of a contract, regardless of whether the contract is integrated or not) (text cited as authority in *In re Estate of Kern*, 107 Nev. 988. 991, 823 P.2d 275, 277 (1991)).

And Weinstein has not argued, below or on appeal, that the contract is ambiguous, nor did he oppose Infuso's argument that the contract is unambiguous. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that matters not raised on appeal are waived); *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."). Moreover, the alleged agreement that Weinstein would not have to pay the invoices, contradicts the terms of the fee agreement—which required Weinstein to

pay within 30 days of receipt and provided that he may be billed for attorneys' and other employees' time working on the case. *See M.C. Multi-Family Dev.*, 124 Nev. at 913-14, 193 P.3d at 544-45. Thus, we cannot conclude that the district court abused its discretion in determining that Weinstein's affidavit—asserting that the contract failed to include all of the parties' terms—was inadmissible, and we likewise discern no error in the court's conclusion that the contract unambiguously required Weinstein to pay Infuso for his attorney services in the unrelated litigation. *See id.*

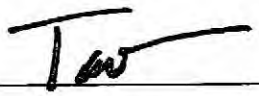
As to Weinstein's assertion that genuine issues of material fact remained, our review of the record indicates that the district court found there were no genuine issues of material fact because Weinstein failed to respond to Infuso's requests for admission and thereby admitted that he breached the contract and that he owed the amount of Infuso's unpaid invoices. On appeal, Weinstein fails to identify any specific facts he believes were still at issue and has failed to offer any argument as to the district court's findings based on his admissions. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3; *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued); *see also Estate of Adams v. Fallini*, 132 Nev. 814, 820-21, 386 P.3d 621, 625 (2016) (explaining that, pursuant to NRCP 36, the failure to respond to a party's request for admissions will result in those matters being deemed conclusively established and those admissions may be relied upon in granting summary judgment). Thus, we discern no error in the district court's conclusion that no genuine issues of material fact remained and that summary judgment was warranted. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Next, Weinstein asserts that the district court improperly shifted the burden from Infuso to him, and erred in concluding that he failed to demonstrate that Infuso's fees were unreasonable. But the district court concluded that Infuso provided substantial evidence demonstrating its billed fees and costs under the agreement were reasonable and necessary, and also concluded that Weinstein failed to produce evidence to the contrary. Thus, the district court did not improperly shift the burden to Weinstein. *See Cuzze*, 123 Nev.at 602, 172 P.3d at 134 (explaining that once the party moving for summary judgment meets its initial burden of demonstrating there is no genuine issue of material fact, the burden shifts to the non-moving party to demonstrate the existence of a genuine issue of material fact).

Based on the foregoing, we discern no error in the district court's grant of summary judgment in favor of Infuso. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

[1]As to Weinstein's assertion that he should have been granted leave to amend his counter-claim, he failed to request leave to amend below; thus, we need not consider that argument on appeal. *Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983. And to the extent Weinstein raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Adriana Escobar, District Judge
M. Paul Weinstein
Greene Infuso, LLP
Eighth District Court Clerk