IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK SCHNIZLEIN,
Appellant,
vs.
BLACK & LOBELLO LAW,
Respondent.

No. 79991-COA

FILED

DEC 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark Schnizlein appeals from a district court order granting summary judgment in a tort and contract action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.[1]

Schnizlein sued respondent Black & LoBello Law (B&L) in connection with the firm's representation of him in a probate matter. The case proceeded to the mandatory Court-Annexed Arbitration Program. While the matter was pending in the arbitration program, B&L filed a motion for summary judgment in the district court. Therein, B&L argued that Schnizlein's complaint presented a claim for legal malpractice, that expert testimony is required to establish the breach of care and causation elements of a legal malpractice claim, and that summary judgment was appropriate because Schnizlein failed to disclose an expert witness. The district court granted B&L's motion in part, concluding that insofar as Schnizlein asserted a claim for legal malpractice, summary judgment was appropriate because he did not disclose an expert witness to support his

[1]Michael A. Royal, Pro Tempore Judge, served as the short trial judge in this case.

claim and the time for doing so had passed. The district court also denied the motion in part, however, reasoning that to the extent Schnizlein asserted a claim for breach of contract, the arbitrator should determine whether he can support it at the arbitration hearing.

Following the hearing, the arbitrator ruled in favor of B&L, finding that Schnizlein did not meet his burden of proof on the causation element of the breach of contract claim. Schnizlein then moved for a trial de novo, and the matter was assigned to the short trial program. B&L moved for summary judgment, arguing that Schnizlein's breach of contract claim was premised on the existence of an attorney-client relationship and that he could not prevail on such a claim since he did not disclose an expert witness to address its breach, causation, and damages elements. The short trial judge agreed with B&L and granted summary judgment in its favor. After the district court reviewed and approved the short trial judge's order, this appeal followed.

As a preliminary matter, insofar as Schnizlein challenges the district court's decision to set aside a default that was entered against B&L early in the underlying proceeding based on the court's failure to make supporting findings, he has not demonstrated a basis for relief. To the contrary, the district court implicitly determined that B&L's time to file an answer was stayed pending Schnizlein's filing of a nonresident bond pursuant to NRS 18.130, as that was the basis of B&L's motion. *See Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970) (explaining that "even in the absence of express findings, if the record is clear and will support the judgment, findings may be implied").

Turning to the grant of summary judgment against Schnizlein on his legal malpractice claim, Schnizlein asserts that he informed the

district court before it ruled on the matter that he had obtained an expert witness. But the record does not support Schnizlein's assertion. Indeed, the first filing in which Schnizlein represented that he was prepared to proffer expert testimony was his motion for reconsideration of the summary judgment on his legal malpractice claim, where he asserted that he obtained an expert witness who could address the validity of certain emails. And although Schnizlein asserts that he informed the district court of the expert witness at the hearing on B&L's motion for summary judgment, Schnizlein elected not to obtain a transcript of that hearing to provide to this court. *See* NRAP 9(b) (providing that a pro se appellant has a duty to request transcripts in a civil appeal if any transcripts are required to support the appeal). As a result, we presume that such a transcript would have supported the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that [any] missing [documents] support[ ] the district court's decision").

But even setting the foregoing aside, Schnizlein's challenge to the summary judgment on his legal malpractice claim is beset by two more fundamental problems. First, although Schnizlein contends that he ultimately informed the district court that he obtained an expert, he does not challenge the court's finding that he failed to disclose any experts within his time for doing so, and he waived any challenge to that decision as a result. *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). Second, the district court determined that expert testimony was required to establish the breach of care and causation

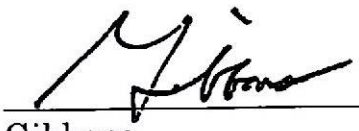
elements of Schnizlein's legal malpractice claim, which he likewise does not dispute on appeal. *See id.* And insofar as Schnizlein sought to produce expert testimony concerning the validity of certain emails, such testimony would not have satisfied this requirement. Thus, given the foregoing, Schnizlein failed to demonstrate that the district court erred by granting summary judgment against him on his legal malpractice claim. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court's grant of summary judgment de novo).

Schnizlein next argues that the short trial judge erred by granting summary judgment on his breach of contract claim because the district court had previously determined that he was entitled to a jury trial on that claim. In this respect, Schnizlein misinterprets the district court's initial summary judgment ruling, which was that he asserted a claim for breach of contract that should be heard by the arbitrator. The arbitrator did, in fact, hear Schnizlein's breach of contract claim, and found that he failed to meet his burden with respect to causation. Moreover, after Schnizlein moved for a trial de novo, the short trial judge also heard Schnizlein's breach of contract claim and reached a similar conclusion on grounds that Schnizlein lacked an expert to address the breach, causation, and damages elements of his claim. And the district court ultimately approved the short trial judge's decision. Thus, because Schnizlein does not otherwise challenge the summary judgment on his breach of contract claim, we conclude that he failed to demonstrate that the short trial judge's decision was erroneous. *See id.*

Lastly, Schnizlein asserts that the short trial judge's summary judgment improperly vacated the short trial that had been scheduled without supporting findings. Schnizlein has failed to demonstrate a basis

for relief in this regard, however, as it is clear from the context of the order and the record as a whole that the short trial judge vacated the short trial because Schnizlein had no remaining claims, and as noted above, the district court ultimately approved the short trial judge's decision. *See Pease*, 86 Nev. at 197, 467 P.2d at 110. Thus, given the foregoing, we

ORDER the judgment of the district court AFFIRMED.[2]



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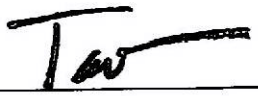
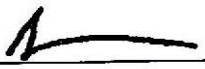


_____, J.
Tao



_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Mark Schnizlein
Lipson Neilson P.C.
Eighth District Court Clerk

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[2]Insofar as Schnizlein raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.