

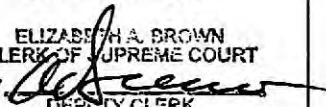
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALDINE TRICE,
Appellant,
vs.
LIBERTY MUTUAL INSURANCE
COMPANY,
Respondent.

No. 79954-COA

FILED

JAN 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Geraldine Trice appeals from a district court summary judgment in an insurance matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Trice initiated the underlying action against respondent Liberty Mutual Insurance Company (Liberty). In her third amended complaint—the operative pleading—Trice asserted claims of breach of contract, breach of the implied covenant of good faith and fair dealing (bad faith), and violations of NRS 686A.310, the Nevada Unfair Claims Practices Act (UCPA). She also sought an award of punitive damages. In relevant part, Trice alleged that Liberty failed to adhere to the terms of her homeowners' insurance policy and adequately reimburse her for expenses relating to water damage in her home.¹

¹Trice is no longer the record owner of the subject property, which was sold to another individual by way of foreclosure while this action was pending.

While the case was pending in the Court Annexed Arbitration Program, Liberty filed a notice of removal to the United States District Court for the District of Nevada, and it filed two dispositive motions in that court: a motion for partial summary judgment with respect to Trice's bad-faith claim and her request for punitive damages, as well as a motion for summary judgment with respect to Trice's remaining claims. Meanwhile, Trice had filed a motion requesting a remand to state court, which the federal district court ultimately granted on grounds that Liberty failed to timely remove and that Trice had not engaged in any conduct that would have tolled that time period. Following the remand to state court, Liberty requested that the district court take judicial notice of the filings in the federal district court, as well as various other court filings from prior cases involving Trice and recorded documents pertaining to the subject property, and that the court rule on the pending dispositive motions. After full briefing and a hearing, the district court granted Liberty's request for judicial notice and both dispositive motions in their entirety. This appeal followed.

On appeal, Trice argues that the district court should have sanctioned Liberty for supposedly removing the case to federal court as a delay tactic.² She further argues that the district court erred in granting

²Trice also appears to argue that the district court erred in allowing Liberty to remove the case to federal court in the first place. But any such argument is without merit, as the efficacy or propriety of removal was not a matter for the district court to decide. *See* 28 U.S.C. § 1446(d) (providing

Liberty's request for judicial notice and its motions for summary judgment. We disagree.

With respect to Trice's sanctions argument, we review a district court's decision concerning sanctions for an abuse of discretion.³ *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1119, 197 P.3d 1032, 1043 (2008). And Trice fails to explain on appeal how the district court's denial of her request supposedly amounted to such an abuse. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument). Instead, she summarily alleges that Liberty removed the action solely to delay its resolution and that such removal constituted "fraud upon the court." But there is no evidence in the record indicating that Liberty acted in bad faith or in a fraudulent manner, and to the extent Trice contends that Liberty's actions were wholly unreasonable simply because the case was ultimately remanded, we are not so persuaded. Cf. *In re Execution of Search Warrants*, 134 Nev. 799, 807, 435 P.3d 672, 679 (Ct. App. 2018) (noting that "[m]erely losing a motion on the merits does not mean that the losing [position] was utterly without

that filing a copy of the notice of removal in state court and giving written notice to adverse parties "shall effect the removal and the State court shall proceed no further unless and until the case is remanded").

³Although it does not appear that the district court explicitly ruled on Trice's request below, "[t]he absence of a ruling awarding the requested [sanctions] constitutes a denial of the claim." *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000).

reasonable ground” (internal quotation marks omitted)). Accordingly, the district court appropriately exercised its discretion in denying Trice’s request. *See Lehrer McGovern Bovis*, 124 Nev. at 1119, 197 P.3d at 1043.

Turning to Trice’s contention that the district court should not have granted Liberty’s request for judicial notice, we likewise review such decisions for an abuse of discretion. *See FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 497 (2012) (“We review a district court’s evidentiary rulings for an abuse of discretion.”); *see also Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (“An appellate court reviews the district court’s decision to take judicial notice [of adjudicative facts] for an abuse of discretion.”). Again, Trice makes vague allegations that Liberty’s conduct in requesting judicial notice of various matters of public record amounted to “fraud upon the court” and was sanctionable. In particular, she alludes to a supposedly ongoing criminal investigation and prosecution related to the documents—many of which concern the foreclosure on her home, her subsequent eviction, and the multiple lawsuits stemming therefrom—in claiming that the veracity of the documents was subject to reasonable dispute. *See* NRS 47.130(2)(b) (providing that a judicially noticed fact must be “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). But the only evidence in the record of any kind of criminal proceedings—reports that Trice herself made to law enforcement—does not by itself create a reasonable dispute as to the accuracy of the judicially noticed documents. We therefore discern

no abuse of discretion on this point.⁴ *See Giglio*, 128 Nev. at 283, 278 P.3d at 497.

Finally, we turn to Trice's contention that genuine disputes of material fact remained with respect to all of her claims and that the district court therefore erred in granting summary judgment in favor of Liberty. 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.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

With respect to breach of contract, the district court determined in relevant part that Trice failed to provide evidence establishing that Liberty in any way breached a contractual duty. *See Laguerre v. Nev. Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011) (setting forth

⁴Even if the district court improperly granted the request for judicial notice, any error would be harmless, as summary judgment would have been warranted even in the absence of the publically recorded documents and the filings and orders from the related cases. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted."); *cf.* NRCp 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

the elements of a breach-of-contract claim in Nevada, including “material breach by the defendant”); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (discussing the burdens of production that arise in the context of a motion for summary judgment, including when a defendant “point[s] out . . . that there is an absence of evidence to support the nonmoving party’s case” (second alteration in original) (internal quotation marks omitted)). The district court further concluded that Trice’s mere “gossamer threads of whimsy” were insufficient to defeat summary judgment. *Wood*, 121 Nev. at 731, 121 P.3d at 1030. Trice contends this was in error because she provided the district court with various documents, including the insurance policy. She also makes vague allegations that Liberty misled her about contractors, that it improperly delayed or denied benefits, and that it conspired with JPMorgan Chase Bank (Chase)—her mortgagee—to commit fraud. We agree with the district court that Trice’s vague allegations and her summary reference to the various documents she provided below are insufficient to carry her burden in opposing summary judgment on the breach-of-contract claim. *See Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134; *see also Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258 (2018) (noting that “the rules of civil procedure cannot be applied differently merely because a party not learned in the law is acting pro se” (internal quotation marks omitted)); *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 438, 245 P.3d 542, 545 (2010) (recognizing that, on summary judgment, “a district court is not obligated to wade through and search the entire record for some

specific facts which might support the nonmoving party's claim" (internal quotation marks omitted)).

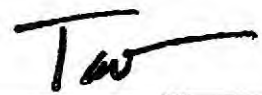
Turning to the bad-faith claim, the district court concluded in relevant part that Trice failed to provide any evidence that Liberty acted unreasonably in handling her insurance claim. *See Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009) ("This court has defined bad faith as an actual or implied awareness of the absence of a reasonable basis for denying benefits of the insurance policy." (alteration and internal quotation marks omitted)). We agree, as the documents Trice provided to the district court—together with her conclusory allegations—demonstrate only that there was an ongoing dispute between the parties regarding the manner and the amount in which benefits were paid, not that Liberty was actually unreasonable in denying certain benefits or otherwise handling Trice's claim. And to the extent Trice contends that Liberty effectively denied her benefits because she believes it was improper for the insurer to issue checks made out to both her and Chase, we note that the district court's finding that the insurance contract contemplated the mortgagee's inclusion on the checks is supported by the record, and our supreme court acknowledged in a previous appeal that Chase was in fact Trice's mortgagee. *See Trice v. JPMorgan Chase Bank*, Docket No. 63052 (Order of Affirmance, September 20, 2013) (providing that Chase "obtained ownership of appellant's loan from the Federal Deposit Insurance Corporation as part of a large-scale acquisition of Washington Mutual's assets").

Turning finally to Trice's claim under the UCPA, we again agree with the district court that Trice failed to provide any support for the notion that Liberty engaged in any of the unfair practices enumerated in NRS 686A.310. And on appeal, she continues merely listing out various enumerated practices along with conclusory allegations concerning Liberty's conduct, rather than cogently explaining how the district court supposedly erred in determining that she did not meet her burden in opposing summary judgment on this claim below. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38; *see also see Cuzze*, 123 Nev. at 602-03, 172 P.3d at 134.

In light of the foregoing, Trice has failed to demonstrate that reversal is warranted, and we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

⁵Insofar as Trice 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. Mark R. Denton, District Judge
Geraldine Trice
Foran Glennon Palandech Ponzi & Rudloff, PC
Eighth District Court Clerk