IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EQUITY HOLDING CORP., A REVOKED CALIFORNIA NON-PROFIT CORPORATION, AS TRUSTEE FOR THE KIRKTON STREET TRUST, NO. 180355558, DATED 04/02/2018,
Appellant,
vs.
BRENT BILLINGSLEA,
Respondent.

No. 80905-COA

FILED

APR 28 2021

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

ORDER OF AFFIRMANCE

Equity Holding Corp. (EHC) appeals from a district court judgment in a quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Brent Billingslea's mortgage payments for his Henderson, Nevada home fell delinquent.[1] Around April 2018, Billingslea negotiated with Bill Gatten to sell the equity in his home. Gatten and Billingslea arranged for Gatten to bring Billingslea's mortgage payments current. In exchange, Billingslea would deed his Henderson home (the property) to EHC to hold in trust for two years as trustee, then EHC would sell the property and divide the proceeds between Billingslea and Gatten. While the property was held in trust, Gatten would find a tenant to lease the property and use the proceeds to continue paying the mortgage.

This contemplated transaction was memorialized in four instruments: a trust agreement, a beneficiary agreement, a rider to the aforementioned agreements, and a grant deed conveying the property to

[1]We recount the facts only as necessary for our decision.

EHC in trust. Only Billingslea's signature was on the copies of the instruments produced at trial.[2]

Gatten paid $15,000 to bring the mortgage payments current. Although Billingslea surrendered physical possession of the property to Gatten, the grant deed conveyed the property to EHC as trustee. Gatten obtained a tenant, Sandra Ward, for the property.

Ward paid Gatten $2,600 a month for rent. Per Billingslea and Gatten's contemplated agreement, Gatten was to use the rental payments in part to make the mortgage payments, which were approximately $2,000 per month. Despite Ward making all of her rental payments on time, the mortgage payments again fell delinquent. Gatten, Ward, and Billingslea called the mortgage holder. The mortgage holder stated that it had not been receiving payments; however, Gatten assured Billingslea that he was making the mortgage payments. Gatten then attempted to evict Ward, claiming she failed to pay rent. At the eviction proceeding, rather than evict Ward, the justice court apparently ordered Ward to make rental payments directly to Billingslea; Ward complied with this order. Billingslea requested that Gatten return the property to him due to Gatten's failure to make the mortgage payments, but Gatten refused.

Billingslea sued EHC, asserting, among other things, that title to the property should be quieted to Billingslea. The district court conducted a one-day bench trial. At trial, Billingslea and Ward testified. Gatten did not testify or submit any sworn statements to the court, and no

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[2]In the declaration of value form attached to the grant deed, there is a signature on the line designated for EHC, but the parties were not able to identify to whom the signature belonged or determine if the signer was authorized to sign on behalf of EHC.

party offered any deposition testimony. Gatten was apparently aware of the trial court proceedings but had no involvement.

Jeff Hatcher, EHC's CFO, testified that, with regard to any transaction in which EHC participates, EHC acts as "[t]rustee; to hold the property for the benefit of the beneficiary, as related to the [t]rust [a]greement." Hatcher clarified that EHC is not a beneficiary to the transaction between Billingslea and Gatten, that EHC only stood to benefit from the transaction by receiving a setup fee ($250) and a monthly fee ($40), and that EHC is not a party to the transaction. However, on cross-examination, Hatcher testified that EHC never received any fees, nor created a contingency fund account despite the rider requiring its creation.

The district court found that no contract existed between EHC and Billingslea and quieted title to Billingslea. This appeal followed.

On appeal, EHC argues (1) the district court erred in concluding that a valid and enforceable contract did not exist between the parties;[3] (2) the district court erroneously quieted title to Billingslea based on the non-intervention of third parties; and (3) if there was no valid and enforceable contract, then the district court erred in failing to order Billingslea to return the $15,000 to Gatten. We disagree.

The district court did not err in concluding that a valid and enforceable contract did not exist between the parties

EHC argues that substantial evidence does not support the district court's finding that there was no contract because the evidence

[3]In its briefing, EHC uses "parties" to include EHC, Billingslea, and Gatten; however, for our purposes, "parties" refers only to the parties to the litigation: EHC and Billingslea.

supports an agreement between Billingslea and Gatten.[4] Billingslea responds that substantial evidence shows no agreement existed between the *parties to the litigation*: Billingslea and EHC. Thus, Billingslea argues, any agreement between him and Gatten is immaterial.

"[W]hether a contract exists is [a question] of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). Substantial evidence is that which "a reasonable mind might accept as adequate to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)). An enforceable contract requires "offer and acceptance, meeting of the minds, and consideration." *May*, 121 Nev. at 672, 119 P.3d at 1257.

Foremost, EHC's argument fails because it presumes that the district court decided that a contract did not exist between Gatten and Billingslea rather than between Billingslea and EHC. The district court's

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[4]EHC's brief specifically disputes four of the district court's findings: (1) "the [p]arties contemplated an agreement [in] which other third parties were to take part," (2) "[t]here were several aspects to the transaction that were not completed," (3) "[t]he agreements admitted as evidence at trial were executed by plaintiff only," and (4) "[t]he involved third parties were fully aware of the subject litigation and never sought to intervene."

decision[5] specified that an agreement did not exist between *Billingslea and EHC*. The decision states the "evidence does not demonstrate the existence of a contract *between the named [p]laintiff and [d]efendant*, the only parties to this case." (Emphasis added.) EHC's argument that an agreement existed between Billingslea and Gatten is, therefore, unavailing because it does not show that the district court's finding that a valid and enforceable contract did not exist between EHC and Billingslea is not supported by substantial evidence.[6] Furthermore, EHC does not explain how the purported existence of a contract between Billingslea and Gatten warrants

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[5]The district court's findings state that the parties failed to prove the existence of a valid and enforceable contract, but the court does not specify if it is referring to a contract between Billingslea and EHC or between Billingslea and Gatten. Thus, we look to the district court's decision to clarify its findings. *See Heidtman v. Nev. Indus. Comm'n*, 78 Nev. 25, 29, 368 P.2d 763, 765 (1962) (considering the district court's decision where its findings of fact and conclusions of law do not facilitate review).

[6]We note that despite EHC's failure to argue that a contract did not exist between EHC and Billingslea, the district court's decision was supported by substantial evidence. An enforceable contract requires "offer and acceptance, meeting of the minds, and consideration." *May*, 121 Nev. at 672, 119 P.3d at 1257. Substantial evidence supports a lack of consideration: Hatcher testified that EHC never received the fees it required to begin performing as trustee and that it failed to create a contingency fund pursuant to the rider. *See* Restatement (Second) of Contracts § 71 (Am. Law Inst. 1981) (defining "consideration"). Substantial evidence supports a lack of an offer: Hatcher testified that EHC "doesn't solicit business;" rather "business comes to [EHC] in [its] domicile," which implies that EHC would not have made an offer to Billingslea. *See id.* at § 24 (defining "offer"). Lastly, substantial evidence supports a lack of acceptance: without an offer, the parties did not create a specific power of acceptance in one another and Billingslea's failure to pay EHC's fees precludes his acceptance by performance even if EHC invited it. *See id.* at § 50 (defining "acceptance").

reversal. *See 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 an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Even if a contract existed between Billingslea and Gatten, substantial evidence shows that EHC could not enforce it against Billingslea. First, EHC expected to benefit from the transaction only incidentally, so it cannot enforce any constituent agreement.

> [A] beneficiary of a promise is an *intended beneficiary* if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) the circumstances indicate that the promisee intendeds to give the beneficiary the benefit of the promised performance.

Restatement (Second) of Contracts § 302(1) (emphasis added). "Unless the third person is an intended beneficiary . . . no duty to him is created." *Id.* at § 302 cmt. e. Hatcher testified that EHC is a "[t]hird [p]arty [t]rustee for beneficiaries." The record does not indicate that Billingslea or Gatten sought each other's performance to satisfy an obligation to pay EHC. Nor does the record show that Billingslea or Gatten intended to give EHC the benefit of performance owed to them. Thus, EHC was only an incidental beneficiary to whom Billingslea did not owe a duty pursuant to the transaction.

Second, EHC did not acquire a right of enforcement simply because Billingslea executed the transaction instruments. As NRS 111.205(1) provides, "[n]o estate or interest in lands . . . nor any trust or power over or concerning lands . . . shall be created . . . [unless] in writing"

and signed by the party creating the interest or power. Indeed, neither the deed nor trust agreement would be unenforceable for lack of Billingslea's signature because NRS 111.205(1) requires only the conveyor's signature. However, as an incidental beneficiary, EHC does not have a right of enforcement regardless of whether the deed or any of the trust instruments were properly executed. *See* Restatement (Second) of Contracts § 302 cmt. e.

In sum, substantial evidence supports the district court's conclusion that no contract existed between EHC and Billingslea. Further, even if a contract existed between Billingslea and Gatten, substantial evidence shows that EHC could not enforce the purported contract because it is an incidental beneficiary.

The district court did not erroneously grant Billingslea relief based upon the non-intervention of Gatten and other third parties

EHC asserts that the district court relied on the non-intervention of or failure to join necessary third parties to quiet title to Billingslea. It elaborates that intervention and joinder are matters of procedure, which do not affect the substantive issue of contract formation, and that a district court may not quiet title on the basis of non-joinder or non-intervention.

Rule 24 of the Nevada Rules of Civil Procedure[7] specifies when a party may intervene in litigation, and Rule 19(a) identifies when a party

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[7]The Nevada Supreme Court amended the Nevada Rules of Civil Procedure effective March 1, 2019. *See In re Creating a Comm. to Update and Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). We refer to the post-amendment version here.

must be joined to litigation. A quiet title action "may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." *Chapman v. Deutsche Bank Nat'l Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013) (quoting NRS 40.010). "A plea to quiet title does not require any particular elements, but 'each party must plead and prove his or her own claim to the property in question' and a 'plaintiff's right therefore depends on superiority of title.'" *Chapman*, 129 Nev. at 318, 302 P.3d at 1106 (quoting *Yokeno v. Mafnas*, 973 F.2d 803, 808 (9th Cir. 1992)).

Here, EHC mischaracterizes the district court's findings. Although the district court stated that third parties failed to intervene, the court did not state that it quieted title *due to* the non-intervention or non-joinder of a necessary party. Rather, the district court noted that third parties were aware of the litigation, yet never sought to intervene. On the other hand, the district court indicated that the lack of an enforceable contract between EHC and Billingslea led it to quiet title to Billingslea. The court found that Billingslea deeded the property to EHC, but Gatten had physical possession of the property. Without a contract between EHC and Billingslea, and in the absence of a viable agreement showing Gatten rightfully possessed the property, the court concluded that it should restore title to Billingslea. Accordingly, the district court did not erroneously grant relief based upon the non-intervention or non-joinder of third parties.

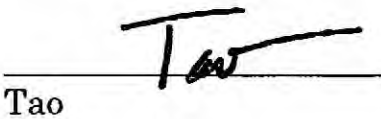
The district court did not err by not ordering Billingslea to return the $15,000 to Gatten despite its finding that there was no enforceable contract between the parties

EHC asks us to order Billingslea to return the $15,000 that Gatten paid to bring the mortgage payments current if we affirm the district

court's finding that no contract existed. Issues that were not argued before the district court are "deemed to have been waived and will not be considered on appeal." *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *see also Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) ("The district court did not address this issue. Therefore, we need not reach the issue."). EHC did not assert a counterclaim for the $15,000 in its answer to the complaint, nor did the district court address the issue in its ruling. EHC claims for the first time on appeal that the district court should have restored Gatten's $15,000 because he is a beneficiary. Due to EHC's failure to raise the issue below, we need not reach the issue. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
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cc: Hon. Mark R. Denton, District Judge
M. Nelson Segel, Settlement Judge
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Eighth District Court Clerk