

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SOLOMON COLEMAN,  
Appellant,

vs.

JOSHUA L. TOMSHECK, ESQUIRE,  
AN INDIVIDUAL; AND LAW OFFICES  
OF BRADLEY J. HOFLAND, P.C., D/B/A  
HOFLAND & TOMSHECK, A NEVADA  
DOMESTIC PROFESSIONAL  
CORPORATION,  
Respondents.

No. 79770-COA

**FILED**

**JUN 28 2021**

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

*ORDER OF AFFIRMANCE*

Solomon Coleman appeals from a district court order granting summary judgment in a civil action. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In the proceedings below, Coleman filed suit against respondents (collectively referred to as Tomsheck), alleging legal malpractice and breach of contract. As relevant here, Coleman was under criminal investigation for certain crimes allegedly committed during the course of his employment as a police officer with the Las Vegas Metropolitan Police Department (LVMPD). Coleman was also being investigated internally by LVMPD's Internal Affairs Bureau (IAB), and IAB ultimately attempted to interview Coleman during the course of its investigation. The parties agreed that Coleman retained Tomsheck to represent him in the criminal matter, but Coleman alleged that Tomsheck also owed him a duty to provide legal advice regarding the IAB investigation, and that Tomsheck

breached that duty, causing him damages. Additionally, as to his breach of contract claim, Coleman alleged that, after he fired Tomsheck and obtained new counsel in his criminal matter, he sought a refund from Tomsheck and that Tomsheck only gave him a partial refund, such that Tomsheck owed Coleman additional money.

After the discovery period ended, in April 2019, Tomsheck moved for summary judgment, asserting that Coleman was required to provide expert testimony regarding duty, breach, and causation with regard to his legal malpractice claim, and that Coleman failed to retain an expert such that Coleman could not prove the elements of his claim at trial and that Tomsheck was entitled to judgment as a matter of law. The motion for summary judgment also asserted that, pursuant to the doctrine of accord and satisfaction, Tomsheck was entitled to judgment as a matter of law on Coleman's breach of contract claim because Coleman admitted he accepted the \$5,000 refund as full satisfaction of his request for a refund. Coleman's opposition to the motion for summary judgment was due May 1, 2019. On May 2, 2019, Coleman, through counsel, filed a motion seeking to extend his time for filing an opposition by another 14 days. In the motion for extension of time, Coleman's counsel asserted that he attempted to file the motion on May 1, 2019, but experienced an error on the court's e-filing webpage, causing the motion to be filed on May 2, 2019. The motion did not properly set the matter for hearing, and the motion was not set on the court's calendar for consideration. On May 15, 2019, the district court entered a minute order indicating that it was granting Tomsheck's motion for summary judgment as unopposed pursuant to EDCR 2.20; that even if

the court had granted Coleman an extension of time, no opposition had been filed to date, and that even considering the merits of the motion, summary judgment was appropriate. A written order to this effect was entered on May 29, 2019.

On June 11, 2019, Coleman filed a motion for reconsideration, asserting that the district court improperly granted summary judgment because had his motion for an extension of time been granted, his opposition was not due until 11:59 pm on May 15, 2019, and the district court granted the motion as unopposed prior to that deadline. At the hearing on the motion for reconsideration, the district court agreed that had the motion for an extension been granted, his time to file an opposition had not yet expired, but the court further determined that it did not grant the motion to extend time. Regardless, the court granted Coleman one week to supplement his motion for reconsideration to address the district court's decision to grant summary judgment on the merits, rather than only its decision to grant the motion for summary judgment as being unopposed. Coleman filed a supplement which only consisted of his proposed opposition to the motion for summary judgment, and Tomsheck filed his response to the supplement. The district court then, without a hearing, denied Coleman's motion for reconsideration, noting that the court previously granted summary judgment on the merits and based on the lack of an opposition, and concluding that Coleman failed to provide any new information or new evidence that would demonstrate the court's grant of summary judgment was clearly erroneous or that a manifest injustice occurred. This appeal followed.

On appeal, Coleman challenges the district court's grant of summary judgment, arguing that by granting the motion for summary judgment as unopposed "in advance of the actual deadline for Coleman's filing of an opposition," the district court arbitrarily denied Coleman a full and fair opportunity to file an opposition to the motion for summary judgment. Coleman also argues that the district court erred in concluding that expert testimony was required to prove his legal malpractice claim and that because the grant of summary judgment was erroneous, the district court's subsequent orders granting attorney fees and costs to Tomsheck likewise must be reversed.

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 dispute 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 disputes of fact. *Id.* 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 [dispute] of material fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

Here, Coleman's assertion that the district court's grant of Tomsheck's motion as unopposed denied him the opportunity to file an

opposition is belied by the record. Contrary to Coleman's assertion, the record demonstrates that Coleman had 14 day days in which to file his opposition to Tomsheck's motion for summary judgment, but failed to do so. See EDCR 2.20(e) (providing that a party has 14 days to file an opposition to a motion and the failure to file an opposition may be construed by the district court as an admission that the motion is meritorious). And as the district court concluded, while the extended time that Coleman requested had not yet expired at the time the district court granted summary judgment, the court did not grant Coleman's request to extend the time. Thus, the actual deadline for Coleman's opposition was May 1, 2019—14 days after Tomsheck served his motion for summary judgment. Based on these facts, Coleman has failed to offer any cogent argument supporting his assertion that he was deprived of an opportunity to oppose the motion for summary judgment within the time permitted by EDCR 2.20(e), and we cannot conclude that the district court abused its discretion in granting Tomsheck's motion for summary judgment as unopposed pursuant to EDCR 2.20(e). See *Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. 824, 828, 335 P.3d 199, 202 (2014) (explaining that the district court has the inherent power to grant summary judgment so long as the losing party is given notice and an opportunity to defend its claim); *King v. Carlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005) (reviewing a district court's decision to grant a motion for summary judgment as unopposed for an abuse of discretion).

As to Coleman's assertion that the district court erred in concluding that expert testimony was required to demonstrate Coleman's

legal malpractice claim, we disagree. “[E]xpert evidence is generally required in a legal malpractice case to establish the attorney’s breach of care, [but] an exception exists in cases where the breach of care or lack thereof is so obvious that it may be determined by the court as a matter of law or is within the ordinary knowledge and experience of laymen.” *Allyn v. McDonald*, 112 Nev. 68, 71, 910 P.2d 263, 266 (1996). Here, Coleman contends that Tomsheck breached his duty to Coleman by failing to inform Coleman about a scheduled IAB interview and that the district court failed to account for this theory of his case. But this theory assumes Tomsheck owed Coleman a duty to advise him regarding the IAB investigation. And while Coleman summarily asserts that Tomsheck owed him a duty, Tomsheck testified that he was not retained to represent Coleman in the IAB investigation, as demonstrated by the plain language of the parties’ retainer agreement, such that no duty was owed. Based on these facts, the district court correctly concluded that whether Tomsheck breached any duty owed to Coleman is not so obvious that it would be within the ordinary knowledge and experience of laypeople. *See id.* Thus, we discern no error in the district court’s grant of summary judgment to Tomsheck based on Coleman’s failure to retain an expert to provide testimony as to the legal malpractice claim. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

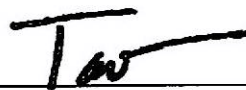
Finally, regarding Coleman’s challenge to the district court’s grant of attorney fees and costs to Tomsheck, such orders are independently appealable as special orders entered after a final judgment. *See* NRAP 3A(b)(8); *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014). However, because these orders are independently appealable, an

appeal from them must be taken by filing a separate, independent notice of appeal from the notice of appeal challenging the district court's grant of summary judgment. *See Campos-Garcia*, 130 Nev. at 612, 331 P.3d at 891. As a result, any attempt to challenge those orders is not properly before us in the context of this appeal.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Eric Johnson, District Judge  
Nelson Law Office, LLC  
Solomon Coleman  
Olson, Cannon, Gormley & Stoberski  
Eighth District Court Clerk

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<sup>1</sup>Insofar as the parties raise 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.