IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KY INVESTMENTS NV, LLC, A DOMESTIC LIMITED LIABILITY COMPANY,
Appellant,
vs.
KING OF CONDOS, INC., A DOMESTIC CORPORATION; AND JASON TRINDADE, AN INDIVIDUAL,
Respondents.

No. 83694-COA

FILED

SEP 14 2022

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

ORDER VACATING AND REMANDING

KY Investments NV, LLC (KY), appeals from a district court order granting summary judgment in a contract and tort action. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

KY, owned by nonparty Jason Smith, filed the underlying action against respondent King of Condos, Inc. (Condos), and its owner, respondent Jason Trindade, asserting claims for breach of contract, breach of the implied covenant of good faith and fair dealing, intentional misrepresentation, conversion, breach of fiduciary duty, and negligence. In relevant part, KY alleged that it executed a Limited Liability Company Agreement (the LLC agreement) with Condos in connection with the formation of iKing Florida, LLC (iKing), the purpose of which was to engage in a variety of real estate activities in Florida. Pursuant to the LLC agreement, KY and Condos obtained ownership interests in iKing as its members, Trindade was individually named as the company's manager, and KY agreed to loan the company $100,000 as initial working capital. Attached as an exhibit to the LLC agreement was a promissory note, signed by Trindade in his capacity as manager of iKing, reflecting the loan amount and identifying KY as the lender and iKing as the borrower. KY claims that

iKing later defaulted on the loan because Condos and Trindade—the former of which KY contends is the alter ego of the latter—allegedly misappropriated the funds for Trindade's personal expenses.[1]

Through counsel, Condos and Trindade filed an answer to the operative complaint, and KY ultimately moved for summary judgment on all claims against both defendants. In response, Trindade alone opposed and filed a countermotion for summary judgment, conceding that Condos was liable on the note as an "obligor," but arguing that Trindade was not personally liable, as he did not sign the note or otherwise make any promises in his individual capacity. Trindade further represented in his countermotion that Condos had "r[u]n out of money and shut down." After holding a hearing on the competing motions, the district court issued a written order summarily denying KY's motion in its entirety and granting Trindade's motion "as to all causes of action except the breach of contract cause," for which the court directed the parties to submit supplemental briefing on the viability of that claim.

Following further briefing by Trindade and KY, the district court, without conducting an additional hearing, issued another summary order granting Trindade's motion as to the remaining breach-of-contract claim, vacating the scheduled calendar call and trial date, and closing the case. The district court then denied KY's motion for reconsideration, and this appeal followed.

As a preliminary matter, we note that Condos did not file an answering brief in this appeal, but Trindade—through the same attorney who represented both him and Condos below—did file such a brief in his individual capacity, in which he represents that Condos was never a party

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[1]Testimony in the record indicates that iKing, which was formed pursuant to Florida law, has since dissolved.

to this case. For the reasons set forth below, we disagree with Trindade's depiction of the case's procedural posture, and we review this matter with the understanding that Condos is, in fact, a party.

Turning to KY's arguments on appeal, it first argues that, while district courts are not explicitly required to set forth findings of fact or conclusions of law in a written order granting summary judgment, the district court's failure to do so in this matter left KY "unsure of how to substantively appeal the decision." KY further argues that the record of the proceedings below does not otherwise support the district court's orders granting summary judgment as required for this court to affirm them. Although we agree with KY generally that our review of this matter is frustrated by the lack of any statement of reasons from the district court in support of its decisions, the confusing manner in which all of the parties have litigated this case—both below and on appeal—greatly exacerbates the difficulty of our task. For the reasons set forth herein, we vacate the district court's orders granting summary judgment, and we remand this matter to the district court for further proceedings and/or a statement of reasons warranting summary judgment.

We review a district court order granting summary judgment de novo, without deference to the lower court's determinations. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Although our rules of civil procedure do not require a district court to set forth any statement of facts or legal conclusions when ruling on a motion for summary judgment, they nevertheless encourage courts to do so, providing that a court *should* state its reasons for granting or denying such a motion on the

record. *See* NRCP 52(a)(3); NRCP 56(a).[2] And our supreme court has held that, even where specific findings or conclusions are not required, "the record must nonetheless indicate the support for the lower court's decision in order for this court to sustain the court's ruling on appeal." *In re Estate of Williams*, 109 Nev. 941, 943, 860 P.2d 166, 168 (1993).

In its briefing, contrary to its assertion that the district court did not support its decisions with any reasoning on the record, KY recounts what it contends the district court concluded at the hearing where it granted summary judgment against KY on all claims except for the breach-of-contract claim. Namely, KY contends that the district court, after initially sympathizing with KY's position, supposedly made an improper factual finding that the allegedly tortious expenditures KY points to in support of its claims were all legitimately incurred in connection with the business of iKing. But KY did not provide a copy of the hearing transcript to this court. And although a district court's oral pronouncements are generally ineffective for any purpose as a substantive matter, *see Nalder v. Eighth Judicial Dist. Court*, 136 Nev. 200, 208, 462 P.3d 677, 685 (2020), they can nevertheless assist this court in construing a vague or ambiguous order to

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[2]NRCP 56 formerly provided that "[a]n order granting summary judgment *shall* set forth the undisputed material facts and legal determinations on which the court granted summary judgment." NRCP 56(c) (2005) (emphasis added); *see ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 656-57, 173 P.3d 734, 746 (2007) (reversing and remanding part of a district court order granting summary judgment for failure to comply with the former NRCP 56(c)). However, the supreme court amended the rule, effective March 1, 2019, such that it now tracks the language in FRCP 56(a) providing that "[t]he court should state on the record the reasons for granting or denying the motion." NRCP 56(a); *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018).

the extent they are consistent with the disposition, *see Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev. 886, 895, 266 P.3d 602, 608 (2011). In light of KY's failure to furnish a hearing transcript, we presume that whatever the district court stated at the hearing supported its decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). But this presumption does not end our inquiry here.

Notably, in response to KY's argument concerning the lack of a statement of reasons in the district court's orders granting summary judgment, Trindade argues in part that, "[e]ven if the District Court were required to issue detailed written findings, it did so." Trindade proceeds to represent that "[t]he Orders contained citation to case law and reasoning as to why the Court concluded that [KY] had not met its burden [to overcome summary judgment]." But this is inaccurate. Contrary to Trindade's characterization, neither order granting summary judgment cited any cases or set forth any actual reasoning.[3] And to the extent Trindade is referring to the district court's post-judgment order denying reconsideration, as argued by KY, that order merely cites three cases setting forth the general standards governing reconsideration; it does not at all address the merits of KY's claims.

Quite apart from his erroneous depiction of the district court's orders, as referenced above, Trindade also misconstrues the procedural posture of this case by inaccurately claiming that Condos did not appear in

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[3]The written orders tracked the previously entered district court minutes, which also did not cite any authority or set forth any reasoning. *See Knox v. Dick*, 99 Nev. 514, 517, 665 P.2d 267, 269 (1983) (looking to district court minutes to interpret an order granting summary judgment that failed to specify grounds for the decision).

the proceedings below. In fact, our review of the district court docket entries transmitted to this court pursuant to NRAP 3(g)(1) reveals that KY filed proof of service with respect to both Trindade and Condos, and that Trindade's counsel then appeared on behalf of both parties by filing a notice of appearance and a motion to dismiss. *See Dornbach v. Tenth Judicial Dist. Court*, 130 Nev. 305, 310, 324 P.3d 369, 372 (2014) (acknowledging that an "appearance" includes a defendant's participation in an action by filing an answer or motion). Moreover, the docket entries and the record provided to this court by KY show that counsel later filed an answer explicitly on behalf of both Trindade and Condos, in which they admit the allegation in KY's complaint that Condos "is listed with the Nevada Secretary of State as a Domestic Corporation, licensed to operate and conduct business in the [S]tate of Nevada."

Although the record contains subsequent representations from both Trindade and his counsel that Condos has dissolved, there is no indication that the underlying action was ever dismissed as to Condos—either by the court or by stipulation—after it appeared.[4] *See* NRCP 41(a)-(b) (governing voluntary and involuntary dismissal). And to the extent Trindade believes that a dissolved corporation cannot participate in litigation and is somehow automatically removed from pending actions, dissolution does not, by itself, preclude actions against a corporation, as "the [dissolved] corporation continues as a body corporate for the purpose of prosecuting and defending suits, actions, proceedings and claims of any kind or character by or against it." NRS 78.585(1). Simply, Trindade fails to cogently explain to this court why he believes Condos essentially

[4]There is likewise no indication that counsel ever withdrew from representing Condos. *See* EDCR 7.40 (governing appearance, substitution, and withdrawal of counsel).

disappeared from the case.[5] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).

While KY does not directly confront Trindade's depiction of Condos' party status—indeed, it makes no effort in its reply brief to respond to Trindade's contention that Condos never appeared in this matter—it is evident from KY's moving papers below and its opening brief on appeal that it believes Condos is a party and that there is no dispute that Condos is liable for repayment of the promissory note. And Trindade agrees with KY on this latter point, conceding both below and on appeal that Condos is so liable. Despite this, the district court entered judgment in favor of Trindade and Condos on all of KY's claims, in response to motions for summary judgment filed only on Trindade's behalf, and it did so in cursory written orders providing no explanation.[6]

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[5]It is also worth noting that the orders challenged on appeal, the parties' moving papers in the district court, the district court's docket entries, the notice of appeal, and the parties' appellate briefs and appendices all list Condos as a party in the case caption.

[6]Although unclear on their face, we construe the district court's orders granting summary judgment as having finally resolved all of the claims as to all of the parties, as the district court vacated the scheduled calendar call and trial date, and the court's docket entries reflect that the final disposition was entered as to both Trindade and Condos. *See Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570, 170 P.3d 989, 993 (2007) (providing that the interpretation of an unclear district court judgment is a question of law, that the judgment must be construed as a whole, and that, when ambiguous, "the interpretation that renders the judgment more reasonable and *conclusive* and brings the judgment into harmony with the facts and law of the case will be employed" (emphasis added)); *see also Bank of Am. N.A. v. Rugged Oaks Invs., LLC*, No. 68504, 2016 WL 5219841, at *1 n.1 (Nev. Sept. 16, 2016) (Order of Reversal and Remand) (exercising jurisdiction by adopting

Given the foregoing, based on the record before us, and contrary to Trindade's assertions in this appeal, Condos was and remains a party to this case. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (providing that a "party" for purposes of NRAP 3A(a) includes an entity that was served with process, appeared in the lower court proceedings, and was named as a party of record in the lower court). But even with this understanding—and, in part, *because* of it—there are a number of factors frustrating our ability to meaningfully review this matter on appeal. For instance, with respect to Condos, it appears that neither the district court nor the parties have adequately addressed that entity's distinct and continued involvement in the underlying action, especially in light of Trindade's concession of Condos' liability on the promissory note.

Moreover, this is a somewhat complicated matter in the sense that it involves three distinct legal entities, two of which are apparently dissolved (Condos and iKing) and one of which was never made a party to the case (iKing); two distinct but related legal instruments in the LLC agreement and the promissory note, the former entered into by KY and Condos, and the latter naming KY as the lender and iKing as the borrower; competing allegations as to the propriety of various expenditures and the existence of various rights and obligations among several parties; and six different causes of action. And although the district court was not required under the rules to set forth its rationale in the orders granting summary judgment against KY on all six claims, such a statement of reasons likely would have assisted both the parties and this court in evaluating the

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"the only interpretation of the district court's order that would result in a final, appealable judgment").

propriety of the district court's decisions.[7] *See Church v. Perales*, 39 S.W.3d 149, 157 (Tenn. Ct. App. 2000) (noting that a cursory order granting summary judgment, while technically consistent with procedural rules, "provides little practical assistance to the parties or the [appellate court]" and that, "[i]n complicated cases involving multiple parties, multiple claims, and multiple defenses, a reviewing court may find itself at a loss to decipher the actual basis for the trial court's decision").

Thus, because it appears that Condos was not properly accounted for as a distinct party in this matter, and due to the generally imprecise manner in which the parties have thus far litigated this case and the lack of any firm indication in the record as to the district court's legal basis for granting summary judgment, we are unable to adequately review the orders challenged on appeal. *See Estate of Williams*, 109 Nev. at 943, 860 P.2d at 168; *see also Grossman v. Berman*, 241 F.3d 65, 68 (1st Cir. 2001) (acknowledging that a statement of reasons for granting summary judgment is sometimes "a necessary precondition to intelligent appellate review"); *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review . . . is hampered."). Under these circumstances, it is within our authority to vacate the challenged orders and remand the case for further proceedings or explanation from the district court. *See Vadino v. A.*

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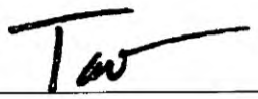
[7]Insofar as KY based its claims on the allegation that Trindade and Condos wrongfully used loan funds for expenses unrelated to the business of iKing, the district court did not explain why it believed the evidence before it—including bank statements from iKing—did not give rise to a genuine dispute of material fact concerning the propriety of the purchases. *See Landau v. J. D. Barter Constr. Co.*, 657 F.2d 158, 163 (7th Cir. 1981) ("Due to the apparent or arguable factual disputes on the major issues in this case, we decline to review the district court orders in the absence of a statement of reasons for granting summary judgment.").

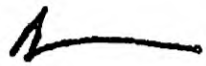
Valey Eng'rs, 903 F.2d 253, 258 (3d Cir. 1990) (recognizing that an appellate court has the inherent supervisory power to require a district court to state its reasons for granting summary judgment); *Landau v. J. D. Barter Constr. Co.*, 657 F.2d 158, 162-64 (7th Cir. 1981) (vacating and remanding a summary judgment in a complex case for the district court to either explain the legal basis for its decision or allow the case to proceed to trial); *United States v. Massachusetts*, 781 F. Supp. 2d 1, 19 (D. Mass. 2011) (recognizing that "it is particularly important to state the reasons for *granting* summary judgment" (emphasis added) (internal quotation marks omitted)); *cf. Estate of Williams*, 109 Nev. at 944, 860 P.2d at 168 (remanding "for an explanation of the district court's method used to calculate [a] rental value"). We therefore vacate the district court's orders granting summary judgment against KY on all of its claims, and we remand this matter for further proceedings and/or, should the district court again decide to grant summary judgment, a statement of reasons in support of its decision.

It is so ORDERED.[8]

_____, C.J.
Gibbons



_____, J.
Tao



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cc: Hon. Nadia Krall, District Judge
Kathleen M. Paustian, Settlement Judge
Saggese & Associates, Ltd.
Law Offices of Shawanna L. Johnson
Eighth District Court Clerk

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[8]In light of our disposition, we need not address any of the other arguments the parties raise on appeal.