IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA,
Appellant,
vs.
PRECISION ASSETS; ACRY DEVELOPMENT LLC; AND WFG NATIONAL TITLE INSURANCE COMPANY,
Respondents.

No. 84762

FILED

APR 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court orders granting motions for summary judgment in a quiet title and negligence action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.[1]

Facts and procedural history

Appellant John Dattala sold two properties ("50 Sacramento" and "59 Sacramento") to nonparty Eustachius Bursey. Bursey agreed to finance the purchase of both properties through loans from Dattala, which were secured by deeds of trust. Thereafter, and allegedly unbeknownst to Dattala, Bursey sold those properties to respondents Precision Assets and Acry Development (collectively, Precision). Respondent WFG National Title Insurance Company (WFG) served as the escrow agent and title insurer for Bursey's sales to Precision.

Upon learning of these sales, Dattala filed the underlying action against Precision, WFG, Bursey, and nonparty Lillian Medina, who served as a notary on various documents pertaining to Dattala's and Bursey's title to the properties. Generally speaking, Dattala's operative complaint alleged that Medina and Bursey had forged and fraudulently executed documents purporting to grant clear title to Precision as to the

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

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subject properties. In this, Dattala alleged fraud-based claims against Bursey. Dattala also asserted negligence-based claims against WFG, alleging that Medina was acting as WFG's agent when she notarized the fraudulent/forged documents. Additionally, Dattala asserted a quiet title claim against Precision, alleging that Bursey's sales to Precision were void due to the fraudulent/forged documents.

Although WFG and Precision defended the action, neither Bursey nor Medina meaningfully did so. As a result, the district court held a prove-up hearing on Dattala's claims against Bursey and Medina on October 13, 2021. Then on October 15, 2021, the district court entered a default judgment against both those defendants. As relevant to this appeal, the default judgment included a "finding" that Bursey had acquired title to the two properties from Dattala via fraud, awarded money damages against Bursey reflecting the unpaid purchase prices for the two properties, and included another "finding" that Medina had acted as WFG's agent.[2]

Contemporaneous with the default-judgment proceedings against Bursey and Medina, WFG and Precision separately moved for summary judgment on Dattala's claims against them. At a September 28, 2021, hearing, the district court orally granted both their motions. In doing so, the district court concluded that (1) WFG could not be held responsible for Medina's alleged misconduct because Dattala had not presented any evidence that she was WFG's agent, and (2) Bursey's sales to Precision could not be invalidated because Precision was a bona fide purchaser (BFP), i.e., Precision lacked notice of Bursey's and Medina's alleged fraud/forgeries. On

[2]Dattala's counsel drafted the default judgment, and the "findings" included in the default judgment were simply copied from the allegations in Dattala's operative complaint.

October 22, 2021, the district court entered separate summary judgment orders in favor of WFG and Precision reflecting those conclusions.

Dattala then moved for reconsideration of both those orders. With respect to the summary judgment in favor of WFG, Dattala contended that three pieces of evidence created a question of material fact regarding whether Medina was WFG's agent: (a) the above-mentioned "finding" in the default judgment; (b) an interrogatory response from WFG, in which it purportedly admitted that Medina was its agent; and (c) a declaration from Bursey wherein he attested that Medina represented that she was WFG's agent. The district court denied that motion.

With respect to the summary judgment in favor of Precision, Dattala contended that (a) the district court overlooked evidence indicating that Precision was not a BFP; and (b) regardless, the district court failed to consider the effect of NRS 111.025 and NRS 111.175. The district court denied that motion.[3]

Discussion

Dattala makes two primary arguments on appeal. First, he contends that summary judgment in favor of WFG was improper because questions of material fact exist as to whether Medina was WFG's agent. Second, he contends that summary judgment in favor of Precision was improper because (a) questions of material fact exist as to whether Precision was a BFP; and (b) even if Precision was a BFP, Bursey's sales to Precision

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[3]Contemporaneous with the parties' summary judgment motion practice, Dattala filed a standalone "Motion for Declaratory Relief" on October 20, 2021, wherein he reiterated his arguments regarding the legal effect of NRS 111.025 and NRS 111.175. The district court denied that motion in a February 25, 2022, order that expressly rejected Dattala's arguments regarding the applicability of those statutes. For purposes of this disposition, we treat the February 25, 2022, order as being part and parcel of the district court's summary judgment/reconsideration rulings.

were void, thereby rendering Precision's BFP status irrelevant. We address these arguments in turn.

1. *The district court properly granted summary judgment for WFG*

Dattala reiterates his argument that summary judgment for WFG was improper because the above-mentioned three pieces of evidence create a genuine issue of material fact regarding whether Medina was WFG's agent. Reviewing the district court's decision de novo, we disagree. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court's decision to grant summary judgment de novo and recognizing that, in doing so, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party"). Alternatively, we conclude that the district court was within its discretion to deny Dattala's motion for reconsideration, *see See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (reviewing for an abuse of discretion the district court's denial of a motion for reconsideration).

As indicated, Dattala first contends that the district court "found" in the default judgment against Medina and Bursey that "Medina at all relevant times was either within the nature and scope of her employment as an employee of WFG or was acting as WF[G]'s agent . . . when she performed the notarial acts described above." However, in denying Dattala's motion for reconsideration, the district court relied on *Estate of Lomastro v. American Family Insurance Group*, 124 Nev. 1060, 1067, 195 P.3d 339, 344 (2008), for the proposition that the entry of the default judgment against Medina did not prevent WFG from contesting its own liability. Dattala does not take issue with the district court's reasoning in that respect or WFG's continued reliance on *Lomastro* in its answering brief, which we otherwise find persuasive. *Cf. Ozawa v. Vision Airlines,*

Inc., 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (recognizing that failure to respond to an argument can be treated as a confession that the argument is meritorious).

Instead, Dattala appears to contend that the district court was bound by the "finding" in its default judgment and lacked authority to subsequently enter a contrary finding in its order granting summary judgment for WFG. For support, Dattala relied in district court on NRCP 54(b), contending that the default judgment was a "final judgment." But Dattala is mistaken, as the default judgment did not resolve Dattala's claims against WFG or Precision and was therefore not a "final judgment."[4] *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (reiterating that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs" (internal quotation marks omitted)). And, by its express terms, NRCP 54(b) provides that "[a]ny order . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . *may be revised at any time* before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." (Emphasis added). Consequently, the district court had the authority to reconsider its previous "finding" of agency when it entered summary judgment for WFG.[5] Thus, we conclude that the

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[4]The district court could have certified the default judgment as final if it "expressly determine[d] that there [was] no just reason for delay." NRCP 54(b). However, the district court's default judgment—which, again, was drafted by Dattala's counsel—did not do so.

[5]To be sure, the district court was never asked to formally "reconsider" the "finding" of agency in its default judgment. However, when the district court entered that "finding" in its October 15, 2021, default judgment, WFG had already moved for—and the district court had orally granted—

district court's "finding" in the default judgment is not evidence that Medina was WFG's agent.

Dattala next contends that WFG admitted in an interrogatory response during discovery that Medina was acting as its agent. However, we agree with the district court that WFG's interrogatory response, when read in its full and proper context, cannot give rise to a *reasonable* inference that Medina was WFG's agent.[6] *See Wood*, 121 Nev. at 729, 732, 121 P.3d at 1029, 1031 (recognizing that although *reasonable* inferences from the evidence must be viewed in favor of the nonmoving party, that party must nevertheless "do more than simply show that there is some metaphysical doubt as to the operative facts" (internal quotation marks omitted)).

Finally, Dattala contends that Bursey's declaration constitutes evidence that Medina was WFG's agent. However, we conclude that the district court was within its discretion in concluding that this declaration was not "newly discovered evidence" for purposes of supporting Dattala's motion for reconsideration, given that Dattala did not explain why he could not have exercised reasonable diligence to obtain that declaration earlier. *See AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197 (observing that

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summary judgment for WFG. Still, WFG's counsel attended the October 13, 2021, prove-up hearing, expressed his belief that any issues adjudicated at that hearing would not impact WFG's interests, and departed the hearing only after being assured that his belief was accurate. Given this sequence of events, we cannot fault WFG for failing to formally ask the district court to "reconsider" its agency "finding" in the October 15, 2021, default judgment.

[6]Dattala's interrogatory asked WFG to "[s]tate with specificity all actions taken and communications evidencing your supervision of Lilian Medina on April 29, 2010." WFG responded by stating that "WFG has been unable to identify information responsive to this Interrogatory. Lilian Medina is an independent notary / signing agent and WFG has no responsibility to supervise her actions."

one of the grounds for granting a motion for reconsideration is the presentation of evidence that is newly discovered or was previously unavailable); *see also Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994) ("Evidence is not newly discovered if it was in the party's possession at the time of summary judgment or could have been discovered with reasonable diligence.").

Accordingly, Dattala did not present evidence sufficient to create a question of material fact regarding whether Medina was acting as WFG's agent when she participated in the alleged forgery and fraudulent execution of documents. Absent any evidence of agency, the district court correctly determined that Dattala's claims against WFG failed as a matter of law. We therefore affirm the district court's October 22, 2021, summary judgment in favor of WFG.

2. *The district properly granted summary judgment for Precision*

Dattala contends that summary judgment for Precision was improper because (a) questions of material fact exist as to whether Precision was a BFP; and (b) even if Precision was a BFP, Bursey's sales to Precision were void, thereby rendering Precision's BFP status irrelevant based on NRS 111.025 and NRS 111.175.

We need not address either of these arguments because the district court provided an additional basis for granting summary judgment in favor of Precision. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that this court may affirm the district court on any ground supported by the record). Namely, the district court concluded that under the related election-of-remedies and double-recovery doctrines, Dattala could not seek quiet title vis-à-vis Precision (i.e., return of the two properties) because Dattala had already obtained a judgment against Bursey for the unpaid purchase prices of those

properties. *Cf. J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 288, 89 P.3d 1009, 1017 (2004) (observing that, under the election-of-remedies doctrine, a party "may not assert contradictory theories of recovery such that assertion of one theory will necessarily repudiate the other"); 25 Am. Jr. 2d Election of Remedies § 3 (2023) ("The purpose of the doctrine of election of remedies is . . . . to prevent double recoveries or redress for a single wrong." (internal footnotes omitted)). In other words, if Dattala were allowed to obtain the full purchase prices from Bursey *and* reacquire title to the properties from Precision, Dattala would receive an impermissible double recovery. *Cf. Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 444, 245 P.3d 547, 549 (2010) (recognizing that under the double-recovery doctrine, "satisfaction of the plaintiff's damages for an injury bars further recovery for that injury").

As Precision notes on appeal, Dattala has altogether failed to address this basis for the district court's summary judgment in favor of Precision on Dattala's quiet title claim, which otherwise appears to be legally sound.[7] We therefore affirm the district court's summary judgment based on its uncontested election-of-remedies determination.[8] *See e.g.*,

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[7]Precision has cited authority for the proposition that the election-of-remedies doctrine prevents a party from seeking both monetary damages and quiet title from different defendants. *See Treglia v. Zanesky*, 788 A.2d 1263, 1270-71 (Conn. App. Ct. 2001). Given Dattala's failure to address the district court's election-of-remedies analysis, we assume for purposes of this disposition that those remedies are inconsistent. *Cf.* NRAP 36(c)(2) ("An unpublished disposition . . . does not establish mandatory precedent . . . .").

[8]From a practical standpoint, Dattala's default judgment against Bursey may be uncollectable. Precision notes, however, that at least one court has rejected an argument that it would be unfair to apply the election-of-remedies doctrine when the party elected to obtain a presumably unenforceable default judgment as its remedy. *See Barbe v. Villeneuve*, 505 So. 2d 1331, 1334 (Fla. 1987).

Hillis v. Heineman, 626 F.3d 1014, 1019 n.1 (9th Cir. 2010) (affirming where appellants did not challenge alternative ground on which the district court dismissed the action); *AED, Inc. v. KDC Invs., LLC*, 307 P.3d 176, 181 (Idaho 2013) ("[I]f an appellant fails to contest all of the grounds upon which a district court based its grant of summary judgment, the judgment must be affirmed."); *Gilbert v. Utah State Bar*, 379 P.3d 1247, 1254-55 (Utah 2016) ("[W]e will not reverse a ruling of the district court that rests on independent alternative grounds where the appellant challenges only one of those grounds.").

In sum, the district court properly granted summary judgment in favor of WFG on Dattala's negligence-based claims, and the district court also properly granted summary judgment in favor of Precision on Dattala's quiet title and declaratory relief claims. We therefore

ORDER the judgments of the district court AFFIRMED.

Stiglich, C.J.

Lee, J.

Bell, J.

cc: Hon. Adriana Escobar, District Judge
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