

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MILTON SCHOSSOW,
Appellant,
vs.
ROBYN ENGLERT,
Respondent.

No. 87288-COA

FILED

JUL 12 2024

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

ORDER OF AFFIRMANCE

Milton Schossow appeals from a district court order granting a motion to dismiss in a contract action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Schossow filed a complaint in which he alleged he performed uncompensated work for respondent Robyn Englert related to the care of horses and the maintenance of a residential property. Englert subsequently filed a motion to dismiss, asserting that Schossow raised a substantially similar claim with the State of Nevada Department of Business & Industry, Office of the Labor Commissioner, in which Schossow stated Englert and her husband owed him wages. Englert also asserted that the claim was settled and Schossow signed a release waiving his ability to again seek additional wages related to the work performed at Englert's property. Englert also filed documentation stemming from those prior proceedings, including the release form. Schossow opposed but did not address the merits of Englert's claim for dismissal. The district court subsequently

entered an order granting Englert's motion and dismissed Schossow's complaint with prejudice.¹ This appeal followed.

On appeal, Schossow challenges the district court's order of dismissal. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.*

As stated previously, Englert moved to dismiss Schossow's complaint because he had already settled his claim concerning unpaid wages and, in the resulting agreement, he released any additional claims and actions related to that issue. The district court reviewed the documents related to Schossow's settlement and release and concluded that his release constituted a waiver of his ability to raise additional claims concerning the allegedly unpaid wages. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) ("Because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law."); *In re Amerco Derivative Litig.*, 127 Nev. 196, 211, 252 P.3d 681, 693 (2011)

¹The district court considered the documents stemming from Schossow's wage claim when it ruled on Englert's motion to dismiss. A district court may consider matters outside the pleadings under certain circumstances without converting a motion to dismiss to one for summary judgment, *see Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 436 (Ct. App. 2023) (stating "a court may properly consider matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on such a motion" (internal quotation marks omitted)), and neither party challenges the district court's consideration of the documents when granting Englert's motion to dismiss.

(noting settlement agreements are contracts and “[u]nder contract law generally, when a release is unambiguous, we must construe it from the language contained within it”).

Schossow does not challenge the district court’s decision to dismiss his complaint based upon the release contained within the settlement agreement, and as a result he has waived this issue on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

Instead, Schossow argues that this matter should have been assigned to the short trial program and appears to assert that dismissal without assignment to the short trial program was not proper. As stated previously, Englert moved to dismiss Schossow’s complaint, and this matter was never assigned to arbitration or the short trial program. Englert was permitted to move for dismissal of this matter pursuant to NRCP 12(b)(5) regardless of whether this case was assigned to the arbitration or short trial program. *See* NAR 4(A) (stating “[c]ases filed in the district court shall remain under the jurisdiction of that court for all phases of the proceedings); NAR 4(C) (stating that Nevada Rules of Civil procedure apply to a case before it is submitted or ordered to the arbitration program); NAR 4(E) (stating that during arbitration proceedings “no motion may be filed in the district court by any party, except motions that are dispositive of the action”); NSTR 1(c) (“The Nevada Rules of Evidence and Civil Procedure apply in short trials except as otherwise specified by these rules.”); *cf.* NSTR (4)(a)(1) (“All cases that are subject to the mandatory court annexed arbitration program in which a party has filed a request for trial de novo shall enter the short trial program.”). Moreover, as detailed above,

Schossow does not demonstrate that the district court's decision to dismiss this matter pursuant to NRCP 12(b)(5) was improper. Accordingly, we conclude that Schossow fails to demonstrate he is entitled to relief based on this claim, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Milton Schossow
Takos Law Group, Ltd.
Eighth District Court Clerk

²Insofar as Schossow raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

In addition, we have considered Schossow's motion filed on May 21, 2024, and we conclude no relief is warranted.