

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ETHEL JONES,
Appellant,
vs.
RAMON S. KABOLI,
Respondent.

No. 87738-COA

FILED
DEC 30 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ethel Jones appeals from district court findings of fact, conclusions of law, and judgment in a contract matter. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In November 2018, Jones filed a complaint against respondent Ramon S. Kaboli asserting causes of action for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, fraudulent misrepresentation, and fraud, and seeking declaratory relief and damages related to a real estate dispute. Jones alleged that Ramon and his father and agent, Steve R. Kaboli, who Jones predominantly interacted with, fraudulently misrepresented that the subject property was “a residential home and church” that could be leased with an option to purchase and induced Jones to enter into a “lease with option to purchase agreement.” The complaint alleged that the parties entered into several agreements in 2013 regarding the property, but that the various agreements contained inconsistent terms. Despite these inconsistencies, Jones took possession of the property but was unable to hold church services due to the property being in disrepair.

24.50204

In 2014, after several disagreements and an unsuccessful attempt to evict Jones, the parties entered into a residential purchase agreement (RPA), which provided that the agreement would span from May 20, 2014, through May 19, 2017, and allow Jones to purchase the property for \$319,000. Under the RPA, Jones would make weekly payments to Ramon and, at the end of the term, Ramon would finance Jones' purchase of the property if she could not obtain her own financing. The RPA additionally provided, in relevant part, that there was a penalty for late payments and a limit of three late payments for the life of the agreement. If Jones made all payments on time and met all other obligations in the RPA, she would be entitled to a \$100,000 credit toward the \$319,000 purchase price. Jones was responsible for the costs and repairs of the water well, all utilities, including sewer, water, and property taxes, and maintaining insurance on the property. The RPA also provided that it was the entire agreement between the parties, could only be modified by writing signed by the parties, and no addendums or verbal agreements would apply to the lease.

Jones alleged that, following the expiration of the RPA, the parties then entered into a subsequent agreement which essentially extended the terms of the RPA to May 2018. She further contended that in May 2018, Steve verbally extended the agreement to September 2018 and assured Jones that Ramon would finance the remaining balance and credit her previous payments toward the purchase of the property. However, Ramon refused to extend the parties' agreement, and as of October 2018, the lease became a month-to-month lease.

Ramon filed an answer, and following several delays, the case proceeded to a bench trial at which Jones, Ramon, and Steve testified. The

parties introduced 82 exhibits into the record, including the RPA; bank records showing various checks that did not clear from Jones; property tax records showing Ramon and/or Steve paid the taxes on the property; default notices for failure to pay rent; and emails between the parties regarding Ramon's repeated demands for payment of rent, property taxes, utilities, and insurance, which Jones was responsible for under the RPA.

Following the trial, the district court entered written findings of fact and conclusions of law and entered judgment in favor of Ramon and against Jones. In its order, the district court concluded that Jones elected the remedy of specific performance, which resulted in dismissal of her remaining claims as abandoned and moot. Because Jones had the burden to show she was entitled to specific performance, she was required to prove that all material terms of the contract were identified and that she performed all obligations, which she failed to do. Instead, the court found that the evidence showed that she failed to both make all required payments to be entitled to exercise the purchase option and make a written demand that Ramon finance her purchase of the property, as required by the RPA. Additionally, although Jones was critical of Ramon's recordkeeping to substantiate the amount of arrears owed, she acknowledged that she failed to pay all property taxes and utilities, maintain insurance, and make timely rent payments.

The district court further found that the documentary evidence corroborated that she defaulted on taxes, sewer, water, insurance, and her other obligations. Further, there was nothing to show that she paid the \$3,000 deposit required under the contract. The court found that Jones' testimony was inconsistent and contradictory regarding payments, that Ramon did not waive the provisions of the RPA as Jones argued, and that

the evidence at trial demonstrated that Ramon sent numerous default notices to Jones, which she admitted she received, for outstanding payments, as well as emails demanding payment and that she cure various breaches of the RPA's provisions. The court acknowledged that Jones testified that she had unproduced receipts at the time of trial for payments she purportedly made under the RPA; however, it concluded that it could not consider that evidence because she had failed to produce it during discovery, despite the receipts being available to her. Thus, for the reasons set forth above, the court concluded that Jones failed to demonstrate she was entitled to specific performance. Finally, the court determined that, by its terms, the RPA superseded all prior agreements, expired on May 19, 2017, and could not be modified without a signed and notarized writing. And it went on to find that there was no documentary evidence provided that showed the RPA was modified prior to its expiration. Therefore, the court concluded that the option to purchase did not survive the expiration of the contract on May 19, 2017. This appeal followed.

On appeal, Jones challenges the district court's order in favor of Ramon and contends that the district court abused its discretion by failing to award her specific performance and improperly focused on late payments. After a bench trial, we review a district court's legal conclusions de novo and uphold the district court's factual findings as long as they are not clearly erroneous and supported by substantial evidence. *Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 458-59, 453 P.3d 1229, 1231 (2019). Further, we review a district court's decision regarding whether to award specific performance for an abuse of discretion. See *Mayfield v. Koroghli*, 124 Nev. 343, 348, 184 P.3d 362, 366 (2008).

Specific performance is available when “(1) the terms of the contract are definite and certain; (2) the remedy at law is inadequate; (3) the appellant has tendered performance; and (4) the court is willing to order [specific performance].” *Id.* at 351, 184 P.3d at 367-68 (quoting *Serpa v. Darling*, 107 Nev. 299, 305, 810 P.2d 778, 782 (1991)).

In this case, we conclude that the district court did not abuse its discretion by declining to award Jones specific performance and finding in favor of Ramon. The court found that Jones failed to perform her obligations under the RPA because the evidence showed that she repeatedly made late payments, paid with checks that did not clear, and failed to pay all utilities, taxes, and maintain insurance. The RPA provided that Jones was responsible for insurance and utilities, including water, trash, and property taxes. It further provided that rent was due each Tuesday with a 10-day grace period, with a limit of three late payments during the life of the agreement. The documentary evidence, including the RPA, bank records, emails between the parties demanding late payments, default notices for failure to pay rent, a notice of cancellation of homeowners insurance due to nonpayment, and property tax records support the court’s determination that Jones failed to perform her obligations under the contract. *See Vegas United Inv. Series 105, Inc.*, 135 Nev. at 458-59, 453 P.3d at 1231.

Moreover, the district court found that Jones’ testimony regarding payments was contradictory, and she acknowledged that she did not pay all property taxes, utilities, and did not make timely payments. And

in this case, Jones elected not to provide this court with transcripts,¹ so we presume that the missing transcripts support the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[] the district court's decision"). Thus, because the evidence showed that Jones failed to perform her obligations under the contract, the district court did not abuse its discretion by declining to award Jones specific performance. *See Mayfield*, 124 Nev. at 348, 184 P.3d at 366.

Jones further challenges the district court's finding in favor of Ramon and argues that the court erred by failing to acknowledge that the parties had an ongoing agreement because they continued to act under the RPA past its expiration. She disputes certain portions of Ramon's and Steve's testimony and claims that their financial records were not accurate.²

We are unpersuaded by Jones' arguments. With regard to her assertion that the parties had an ongoing agreement because they

¹Jones cancelled her initial transcript request and then later informed the court reporter that she needed transcripts prepared. However, she never submitted a transcript request form or payment. The supreme court thereafter filed a May 24, 2024, order reminding Jones that it was her responsibility to properly request transcripts, pay for them, and submit them to the court. Nonetheless, no transcripts were filed in this matter.

²Jones also makes conclusory assertions that the RPA contained ambiguous language. But she offers no explanation or analysis of this assertion, such that it was not cogently argued, and we therefore decline to address it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by cogent arguments).

continued to perform under the RPA, we disagree. As an initial matter, this argument lacks merit because, as set forth above, the district court found that Jones failed to perform her obligations under the RPA, and that finding is supported by substantial evidence. *See Vegas United Inv. Series 105, Inc.*, 135 Nev. at 458-59, 453 P.3d at 1231. Thus, to the extent that she attempts to argue that the RPA was extended because she continued to perform her obligations, that argument is belied by the record.

Moreover, to the extent that Jones essentially asserts that the district court should have honored the parties' alleged intent to extend the RPA and that Steve's purported subsequent verbal agreements with her were made on behalf of and bound Ramon and demonstrate that they intended to continue the RPA beyond its expiration this argument likewise lacks merit. The RPA explicitly stated that it constituted the parties' entire agreement, any modifications needed to be in writing signed by all parties, and any addendum or verbal agreements would not apply to the lease. It also provided that the RPA ended on May 19, 2017. Those provisions of the contract were not ambiguous, and she failed to present any documentation showing that they had extended the agreement. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) ("This court initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written." (internal quotation marks omitted.)); *see also Reno Club v. Young Inv. Co.*, 64 Nev. 312, 324, 182 P.2d 1011, 1016-17 (1947) ("Courts cannot make for the parties better agreements than they themselves have been satisfied to make"). Thus, we cannot say that the district court erred by failing to acknowledge the existence of an ongoing agreement to extend the RPA's

terms. *See Vegas United Inv. Series 105, Inc.*, 135 Nev. at 458-59, 453 P.3d at 1231.

Further, although Jones asserts Ramon and Steve gave inaccurate testimony or that the evidence, including the financial records, should have been viewed in a different manner, it was the district court's responsibility, as trier of fact, to weigh witness credibility and resolve any conflicts in the evidence. We do not reweigh the credibility of witnesses or the evidence presented to the district court. *See Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (stating that appellate courts do not reweigh the credibility of witnesses on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183-84, 14 P.3d 522, 523-24 (2000) (refusing to reweigh evidence on appeal). And, in any event, because Jones failed to provide this court with transcripts, we are unable to review the testimony and, thus, conclude it supports the district court's decision. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135.

Next, Jones contends that the district court abused its discretion by denying her requests at trial to introduce evidence that she made additional payments to Ramon. She argues that her evidence was not produced during discovery because her attorneys failed to disclose it.

We review a district court's decision to admit or exclude evidence for an abuse of discretion. *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). NRCP 16.1(a)(1)(A)(ii) requires that a party must provide to the other party "a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses[.]"

In this case, Jones failed to disclose the subject evidence during the discovery process as required by NRCP 16.1(a)(1)(A)(ii). Instead, she attempted to introduce that evidence at trial, rather than comply with the disclosure requirements under NRCP 16.1. Although she contends that her attorneys failed to disclose the evidence during discovery, she is bound by her attorneys' actions. *See Wehrheim v. State*, 84 Nev. 477, 480, 443 P.2d 607, 608 (Nev. 1968) ("A party is bound by the acts of his attorney in the management of his case."). As such, we conclude that the court did not abuse its discretion in excluding the evidence that Jones claims she had to support her position that she made additional payments. *See M.C. Multi-Family Dev., LLC*, 124 Nev. at 913, 193 P.3d at 544.

Accordingly, based on the reasoning set forth above, we
ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Insofar as the parties raise 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 light of our disposition, we remove the August 26, 2024, stay we placed on the property at issue during the pendency of this appeal.

cc: Hon. Tara D. Clark Newberry, District Judge
Ethel Jones
Law Offices of John M. Netzorg
Eighth District Court Clerk