

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DIANA YOALY PALACIOS, AN
INDIVIDUAL,
Appellant,
vs.
DEBT EDUCATION AND
CERTIFICATION FOUNDATION, A
TEXAS NON-PROFIT ORGANIZATION,
Respondent.

No. 85592-COA

FILED
DEC 30 2024
ELIZABETH ALBROW
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Diana Yoaly Palacios appeals from a district court order granting a motion for judgment on the pleadings. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Palacios suffered financial hardships and decided to file for bankruptcy. As a precursor to the bankruptcy filing, Palacios had to obtain a certificate of counseling from an approved credit counseling provider. To that end, Palacios paid respondent Debt Education and Certification Foundation (DEACF) a \$50 fee, obtained information from DEACF, and received the aforementioned certificate of counseling. Palacios subsequently filed a petition for bankruptcy in bankruptcy court and attached the certificate of counseling to her petition. The bankruptcy trustee thereafter informed Palacios that she failed to include necessary information with her petition. The bankruptcy trustee later moved for dismissal of the petition because Palacios failed to file a schedule of assets,

a schedule of current income and current expenditures, and an itemized statement of her monthly net income, asserting that dismissal was mandatory under 11 U.S.C. § 521(i)(1) when an individual debtor fails to timely file the required information. The bankruptcy court accordingly dismissed Palacios' petition for bankruptcy.

Following dismissal of her petition for bankruptcy, Palacios filed a complaint in the district court, naming DEACF as a defendant. In her complaint, Palacios alleged that she decided to file for bankruptcy and thereafter contacted DEACF to obtain the credit counseling certificate. She also alleged that she filed a petition for bankruptcy, that the bankruptcy trustee moved for dismissal of her petition based on her failure to file required information, and that her bankruptcy petition had been dismissed. Palacios also noted that she participated in credit counseling with DEACF but alleged that DEACF should have provided her with more substantive counseling. Palacios further alleged that the dismissal of her bankruptcy matter damaged her credit history and that she was entitled to damages based on the harm to her credit history and credit report. In light of those factual allegations, Palacios alleged she was entitled to monetary damages in excess of \$15,000 based on the following causes of action: breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, unjust enrichment, fraud, and deceptive trade practices. DEACF thereafter filed its answer to the complaint.

Palacios subsequently filed a motion for leave to file an amended complaint. Palacios contended that the discovery proceedings revealed additional facts such that an amended complaint was warranted.

In her proposed amended complaint, Palacios included two additional causes of action: a violation of federal law, *see* 11 U.S.C. § 111; 28 C.F.R. § 58.20, by failing to provide appropriate credit counseling services; and loss of prospective business opportunity by failing to provide Palacios with information that would have prevented her from filing for bankruptcy.

DEACF later filed both a motion for judgment on the pleadings and an opposition to Palacios' motion for leave to file an amended complaint. In its motion for judgment on the pleadings, DEACF contended that the facts as alleged did not entitle Palacios to relief. DEACF filed several documents in support of its motion for judgment on the pleadings, including filings from Palacios' bankruptcy matter. DEACF asserted that the district court could review the documents without converting it to one for summary judgment under NRCP 56 because Palacios' bankruptcy matter was one of public record and her complaint necessarily relied upon the information in her bankruptcy case. DEACF also urged the district court to deny Palacios' request for leave to file an amended complaint as any amendment would be futile.

Palacios opposed the motion and urged the district court to construe it as a motion for summary judgment because DEACF filed documents in support of the motion. The district court ultimately issued a written order granting DEACF's motion for judgment on the pleadings and denying Palacios' motion for leave to file an amended complaint. In its order, the court noted that Palacios took DEACF's credit counseling course and thereafter received the certificate of counseling that permitted her to file for bankruptcy. The court further reviewed the bankruptcy court

documents and noted that Palacios filed a petition for bankruptcy. The court also noted that Palacios failed to file the necessary financial information with the bankruptcy court and that her petition for bankruptcy was dismissed based on that failure.

The district court also found that Palacios alleged that she paid for a financial course from DEACF and that it was undisputed that DEACF provided a financial course and the certificate that allowed Palacios to file her bankruptcy petition. The court found that, based on Palacios' allegations, DEACF delivered what Palacios bargained for. Because DEACF delivered the benefit that Palacios bargained for, Palacios' claims of breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, fraud, and deceptive trade practices lacked merit. In addition, the court concluded that Palacios' allegations were insufficient to establish that a fiduciary relationship between herself and DEACF existed, and thus, Palacios' claim of breach of fiduciary duty failed.

Further, the district court concluded that Palacios' alleged damages stemmed from her own failure to file the necessary information in her bankruptcy proceeding and that failure resulted in the dismissal of her bankruptcy petition. The court therefore concluded that any claim alleging that DEACF was the cause of her bankruptcy dismissal necessarily failed. Because Palacios' allegations did not establish a sufficient claim that DEACF failed to deliver the bargained for course or that it was the cause of her bankruptcy dismissal, the court concluded that her request to file an amended complaint was futile. Accordingly, the district court denied

Palacios' motion for leave to file an amended complaint. This appeal followed.

First, Palacios challenges the district court's decision to grant DEACF's motion for judgment on the pleadings. Palacios contends that the court should have converted the motion to a motion for summary judgment because the motion relied on information outside of the pleadings. Palacios also argues the motion should have been denied as the parties disputed whether DEACF provided adequate counseling services.

"Under NRCP 12(c), the district court may grant a motion for judgment on the pleadings when the material facts of the case are not in dispute and the movant is entitled to judgment as a matter of law." *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014) (internal quotation marks omitted). "Because an order granting a motion for judgment on the pleadings presents a question of law, our review of such an order is de novo." *Id.* "As with a dismissal for failure to state a claim, in reviewing a judgment on the pleadings, we will accept the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party." *Id.* at 993-94, 340 P.3d at 1266.

Similar to considering a motion to dismiss for failure to state a claim upon which relief can be granted, in considering a motion for judgment on the pleadings, the district court may consider a document referenced in the complaint and that is crucial to the complaint when neither party challenges the document's authenticity. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (providing that "the court may take into account matters of public record,

orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on” a NRCP 12(b)(5) motion); *see also Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (explaining that the court can “consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the document” (internal quotation omitted)); *Sadler*, 130 Nev. at 993-94, 340 P.3d at 1266 (2014) (noting that the review for an NRCP 12(b)(5) motion is similar to the review of an NRCP 12(c) motion). Moreover, while presentation of matters outside of the pleadings may convert a motion seeking dismissal to one for summary judgment, “such conversion is *not* triggered by a court’s consideration of matters incorporated by reference or integral to the claim.” *Baxter*, 131 Nev. at 764, 357 P.3d at 930 (internal quotation marks omitted).

Having considered the parties’ arguments and the record before this court, we conclude that the district court properly considered the documents filed in Palacios’ bankruptcy matter when granting DEACF’s motion for judgment on the pleadings. Palacios’ complaint repeatedly referred to her bankruptcy matter, the records filed in the bankruptcy court were matters of public record and were central to Palacios’ claims, and no party questioned the authenticity of the documents filed in the bankruptcy matter. Because the documents filed in Palacios’ bankruptcy matter were integral to Palacios’ claims, the district court was not required to convert the motion to one for summary judgment by considering the documents filed

in the bankruptcy court. *See id.* Accordingly, we conclude that Palacios is not entitled to relief based on this argument.

Next, we conclude that the district court did not err by granting DEACF's motion. As Palacios sought damages based upon DEACF's alleged failure to provide appropriate credit counseling, she had to allege a causal connection between her alleged monetary losses and DEACF's actions. *See Mort Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 955 (1989) ("The party seeking damages has the burden of proving both the fact of damages and the amount thereof."); *Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022) ("Relating to damages, a plaintiff must prove both (1) a causal connection between the defendant's breach and the damages asserted, and (2) the amount of those damages.").

Here, Palacios sought damages in excess of \$15,000, but she did not connect those alleged damages to DEACF's actions. In her complaint, Palacios alleged that she decided to file for bankruptcy prior to her contact with DEACF. Palacios alleged that she was required to take a credit counseling class prior to initiating her bankruptcy proceeding. To that end Palacios alleged that she took a credit counseling class from DEACF and that DEACF thereafter issued her a certificate of counseling. Palacios further alleged that she attached the certificate of counseling to her bankruptcy petition. Palacios also alleged that the bankruptcy trustee instructed her to provide additional information to the bankruptcy court and that her petition for bankruptcy was dismissed based on her failure to provide financial information to the bankruptcy court. The bankruptcy

court documents DEACF filed in support of its motion for judgment on the pleadings support those allegations. Palacios alleged the dismissal of her bankruptcy petition caused her damages by harming her credit history and credit report.

In light of the foregoing, Palacios did not establish a causal connection between her alleged damages and any action by DEACF. As found by the district court, the facts in this matter demonstrate that Palacios' bankruptcy petition was dismissed based on her actions and omissions. Thus, any damages resulting from Palacios' decision to file for bankruptcy and the later dismissal of the bankruptcy petition were not caused by DEACF.

Because Palacios failed to sufficiently allege damages stemming from actions performed by DEACF, her allegations failed to establish that she was entitled to monetary damages based on her claims of breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, fraud, or deceptive trade practices.¹ See *Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458 (noting plaintiff must establish a breach of contract was the cause of plaintiff's damages); *State*

¹The district court also concluded that Palacios was not entitled to relief based on her claim of unjust enrichment. See *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012) (stating elements of an unjust enrichment claim). Palacios has not provided cogent argument concerning her unjust enrichment claim. As a result, this court need not consider this issue. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that Nevada's appellate courts need not consider issues unsupported by cogent argument and relevant authority).

Dep't of Transp. v. Eighth Jud. Dist. Court, 133 Nev. 549, 555, 402 P.3d 677, 683 (2017) (explaining a plaintiff may recover for damages stemming from a breach of the implied covenant of good faith and fair dealing); *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009) (explaining that proof of damages is an element of a valid breach of fiduciary duty claim); *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115, 117 (1975) (explaining that proof of damages is an element of a valid fraud claim); *see also* NRS 41.600(3)(a) (stating that a victim of consumer fraud, including those based on deceptive trade practices, may recover damages incurred as a result of the wrongful actions).

Based on the foregoing, we conclude that the material facts were not in question and that Palacios fails to demonstrate that the district court erred by granting the motion for judgment on the pleadings. *See Sadler*, 130 Nev. at 993, 340 P.3d at 1266.

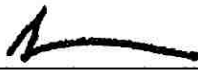
Next, Palacios argues that the district court abused its discretion in denying her motion for leave to file an amended complaint. “A motion for leave to amend is left to the sound discretion of the trial judge, and the trial judge’s decision will not be disturbed absent an abuse of discretion.” *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). “Leave to amend . . . should not be granted if the proposed amendment would be futile.” *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017) (internal quotation marks omitted). Here, the district court concluded that amendment of Palacios’ complaint would be futile in light of her failure to allege that she suffered damages as a result of actions taken by DEACF.

The court therefore denied Palacios' motion for leave to amend. Based on our review of the record, we conclude that Palacios fails to demonstrate the district court abused its discretion by denying her motion. *See State, Univ. & Cmty. Coll. Sys.*, 120 Nev. at 988, 103 P.3d at 19.

In light of the foregoing analysis, we conclude that Palacios is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

²Palacios also challenges the district court's post-judgment order awarding DEACF attorney fees. However, that issue is not properly before us. An order granting attorney fees is independently appealable as a special order after final judgment. *See* NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment); *Smith v. Crown Fin. Servs.*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). The record demonstrates that the order awarding attorney fees was entered after Palacios initiated this appeal and Palacios did not thereafter file a notice of appeal from that order. Thus, Palacios' challenge to the district court's post-judgment attorney fees order is not properly before this court as part of this appeal, and we do not consider it in resolving this matter.

cc: Hon. Timothy C. Williams, District Judge
James Kwon, LLC
Law Offices of Miles N. Clark, LLC
Eighth District Court Clerk