IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC SCHWEDT, D/B/A ERIC SCHWEDT STONE & MASONRY; AND ERIC SCHWEDT CONSTRUCTION, INC., Appellants, vs. 961 MATLEY PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent.	No. 86178-COA
ERIC SCHWEDT, D/B/A ERIC SCHWEDT STONE & MASONRY; AND ERIC SCHWEDT CONSTRUCTION, INC., Appellants, vs. 961 MATLEY PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent.	No. 86791-COA

FILED

JAN 31 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Schwedt, d/b/a Eric Schwedt Stone & Masonry, and Eric Schwedt Construction, Inc., (collectively appellants) appeal from a final judgment in a declaratory relief action and a post-judgment order denying attorney fees and costs. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge, and Kathleen A. Sigurdson, Judge.[1]

[1]Judge Freeman entered the findings of fact, conclusions of law, and judgment, while Judge Sigurdson entered the post-judgment order denying appellants' motion for attorney fees and costs.

Respondent 961 Matley Properties, LLC (Matley) sued Eric Schwedt for breach of a personal guaranty of a lease. Judgment was entered against Schwedt personally on July 22, 2019, in the amount of $70,578.59. However, the judgment remained unsatisfied. In aid of execution on the judgment, Matley took post-judgment discovery, including two court-ordered judgment debtor examinations of Schwedt. During his first judgment debtor examination in September 2019, Schwedt testified that he did not have assets sufficient to pay the judgment. Schwedt further testified that his investment in the gym business came from $100,000 he distributed to himself from one of his businesses. In July 2020, Matley filed the underlying complaint for declaratory relief seeking to obtain a judicial declaration that Schwedt's two business entities, Eric Schwedt Stone & Masonry and Eric Schwedt Construction, Inc., are alter egos of Eric Schwedt. The complaint included a request for attorney fees pursuant to the attorney fees clause in Schwedt's personal guaranty.[2]

Subsequently, the district court held a bench trial in October 2022, where Schwedt was the only witness to testify. At trial, Schwedt acknowledged that he was the sole owner, director, officer, and decision-maker of both of the business entities. Bank records and business tax returns were presented at trial to indicate that the business entities were

[2]The personal guaranty stated "[i]n the event of any action by said landlord against Guarantor, hereunder, to enforce the obligation of the Guarantor, hereunder, the unsuccessful party in such action shall pay the prevailing party therein a reasonable attorney's fee which can be fixed by the Court."

generating millions of dollars in revenue and that the revenue of Schwedt's business entities was used to pay for his personal expenses.

Thereafter, the district court entered its findings of fact, conclusions of law, and judgment in January 2023. The court found that Schwedt admitted that he was the sole owner, director, officer, and decision-maker of Eric Schwedt Construction, Inc. and Eric Schwedt Stone & Masonry and that he ultimately influences and governs both business entities. The court further found that the preponderance of the evidence demonstrated a commingling of funds between Schwedt and his sole proprietorship and the corporation, a failure to observe corporate formalities, repeated unauthorized diversion of funds from the sole proprietorship and corporation to Schwedt, that Schwedt treated the assets of his entities as his own, and that it would represent a manifest injustice to recognize the sole proprietorship and corporation as entities separate from Schwedt individually. The court ultimately determined that "Matley Properties is entitled to a judgment for declaratory relief that Mr. Schwedt is the alter ego of the Defendants" and rendered judgment in favor of Matley.

Subsequently, Matley filed a motion for attorney fees and costs, which appellants opposed. Appellants also separately filed their own motion for attorney fees and costs alleging that they had prevailed at trial. In their motion, appellants argued that Matley's action did not assist in the enforcement of the outstanding judgment against Schwedt and that the court's grant of declaratory relief did not attach liability for Matley's judgment to the appellant businesses. Accordingly, appellants argued that Matley was unsuccessful in the action, and that appellants were the

prevailing party and were therefore entitled to their attorney fees and costs. The district court later entered an order granting Matley's motion for attorney fees and costs and denying Schwedt's motion for attorney fees and costs. In so doing, the court found that it was indisputable that Matley was the prevailing party in the action, as noted in the district court's findings of fact, conclusions of law, and judgment. These consolidated appeals followed.

Alter ego determination

Appellants initially assert that Matley was not entitled to obtain alter ego relief because Matley had adequate remedies at law and did not pursue those remedies before bringing an action for alter ego relief. In making this argument, appellants cite caselaw regarding equitable remedies not being available where a plaintiff has a full and adequate remedy at law and caselaw from other jurisdictions. Conversely, Matley asserts that Nevada does not require that other collection attempts be completed before a party may sue for alter ego liability. Matley further asserts that it pursued other collection efforts first, that a levy on Schwedt's personal account only garnished a couple of thousand dollars, and that the complaint for alter ego liability was only initiated after Schwedt testified during his debtor examinations that he had no plans to satisfy the judgment because he personally had no money.

In Nevada, NRS 78.747(2), which sets forth the elements for recovering under an alter ego theory, does not require a party to first prove that there is no other full and adequate remedy at law available before initiating an alter ego claim. And absent the inclusion of such a requirement in the statute, we decline to impose one here. *See Leven v.*

Frey, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) ("[W]hen a statute's language is plain and its meaning clear, [we generally] apply that plain language."). Further, even under the Nevada equitable remedies cases appellants rely on, the availability of alternative remedies does not necessarily foreclose a party from seeking such relief. *See Nev. Mgmt. Co. v. Jack*, 75 Nev. 232, 236, 338 P.2d 71, 73 (1959) (holding that the availability of other remedies "does not defeat [a party's] right to sue for declaratory judgment" where appropriate).

Moreover, appellants fail to demonstrate that Schwedt personally had any assets that could have satisfied the judgment such that there were viable alternative remedies even available to Matley. Specifically, the record demonstrates that Schwedt conceded at trial that, at his judgment debtor examination in the prior matter, he admitted that he had no money personally to pay the judgment. The record further indicates that Matley tried to garnish any monies owed to Schwedt by Eric Schwedt Construction, but that entity, via Schwedt, indicated Schwedt was not owed any monies. Thus, for the reasons set forth above, we are not persuaded by this argument.

Next, appellants challenge the district court's alter ego determinations and argue that Matley failed to meet its burden in showing that the elements for a reverse piercing of the corporate veil were met. "[A]lthough corporations are generally to be treated as separate legal entities, the equitable remedy of piercing the corporate veil may be available to a plaintiff in circumstances where it appears that the corporation is acting as the alter ego of a controlling individual." *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000) (internal

quotations omitted). This court "will uphold a district court's determination with regard to the alter ego doctrine if substantial evidence exists to support the decision." *Id.* at 904, 8 P.3d at 846. Substantial evidence is that which "a reasonable person may accept as adequate" to support a conclusion. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007).

Nevada law also allows for a reverse piercing of the corporate veil for situations involving "a creditor reaching the assets of a corporation to satisfy the debt of a corporate insider based on a showing that the corporate entity is really the alter ego of the individual." *LFC Mktg. Grp., Inc.*, 116 Nev. at 903, 8 P.3d at 846. To determine whether reverse piercing is warranted, courts look to the same test used for a traditional piercing. *Id.* at 904, 8 P.3d at 846-47. This test consists of three factors: (1) "[t]he corporation is influenced and governed by the person;" (2) "[t]here is such a unity of interest and ownership that the corporation and the person are inseparable from each other;" and (3) "[a]dherence to the notion of the corporation being an entity separate from the person would sanction fraud or promote a manifest injustice." NRS 78.747(2) (codifying the common law piercing test). The district court must determine whether a "person acts as an alter ego . . . as a matter of law." NRS 78.747(3). Additional factors that may indicate the existence of an alter ego relationship include: "(1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities." *LFC Mktg. Grp., Inc.*, 116 Nev. at 904, 8 P.3d at 847.

Here, the district court's decision set forth detailed findings demonstrating that Schwedt, his sole proprietorship, Eric Schwedt Stone

and Masonry, and his corporation, Eric Schwedt Construction, Inc. were one and the same and, thus, were each alter egos of the other. The court found that the corporation was combined with Schwedt's sole proprietorship on tax returns, which showed the same income, expenses, and assets for both entities. The court further found that the preponderance of the evidence established that the sole proprietorship and corporation were influenced and governed by Schwedt, that there was commingling of funds between Schwedt and his sole proprietorship and corporation, that there was a failure to observe corporate formalities, that there were repeated unauthorized diversions of funds from the sole proprietorship and corporation to Schwedt, that Schwedt treated the assets of his entities as his own, and that it would represent a manifest injustice to recognize the sole proprietorship and corporation as entities separate from Schwedt individually.

These findings are supported by substantial evidence in the record. As the district court found, Schwedt filed the same tax returns—showing the same income, expenses, and assets—for both the sole proprietorship and the corporation. And these business tax returns for 2017 and 2018 listed the sole proprietorship in Schwedt's personal name and the corporation as the same taxpayer. Further, Schwedt testified at trial that both business entities were influenced and governed by himself and acknowledged that both business entities operate out of his personal home. The record further supports the conclusion that Schwedt treated his business account and his business assets as his personal assets, as—for example—his business banking account would directly pay and subsidize his personal credit card charges.

Thus, the district court's alter ego findings were supported by Schwedt's trial testimony and the evidence presented at trial. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (explaining that a district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence). And because the district court found that all of the pertinent factors supported reverse piercing the corporate veil, *see LFC Mktg. Grp., Inc.*, 116 Nev. at 902, 8 P.3d at 845, appellants challenge to the district court's findings made in support of its alter ego determination does not provide a basis for relief.

Moving beyond the court's findings, appellants summarily assert that the district court nonetheless abused its discretion in finding that Eric Schwedt was the alter ego of the business entities because the complaint actually sought a declaration that the businesses are alter egos of Schwedt. As a result, appellants contend that the district court deprived appellants of their due process rights in making its alter ego determination.

But in making this argument, appellants take an unduly narrow reading of the district court's alter ego determination. While the district court did state that Schwedt was the alter ego of the business entities, it is clear from a review of the challenged order that the court's ultimate finding was that the appellant businesses and Schwedt are all effectively one and the same for alter ego purposes. Notably, the court found that "the preponderance of the evidence shows that it would represent a manifest injustice to recognize the sole proprietorship/corporation as an entity separate from Mr. Schwedt individually." The court also noted that Schwedt's actions "demonstrate that he recognizes no distinction between

the assets, income and expenses of his business and himself. He treats them as one and the same."

Pertinent to appellants' due process argument, the allegations and claims set forth in Matley's complaint were sufficient to put appellants on notice that the relief Matley sought was an alter ego determination that Schwedt and his business entities were legally one and the same. Moreover, the record demonstrates that appellants addressed these issues throughout the trial, resulting in the district court findings outlined above. Under these circumstances, we cannot say that appellants did not have adequate notice and an opportunity to respond, such that their due process rights were violated. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007). And given that the court's findings were supported by substantial evidence in the record, *see Ellis*, 123 Nev. at 149, 161 P.3d at 242, we discern no impropriety in the court's reverse veil piercing and alter ego determinations, *see LFC Mktg. Grp., Inc.*, 116 Nev. at 904, 8 P.3d at 846.

We are likewise unpersuaded by appellants' summary assertion that an individual's sole proprietorship cannot be found to be an alter ego of a person or a corporation. Appellants only cite to NRS 78.747 in making this argument, but there is nothing in that statute that suggests it would not apply to sole proprietorships. And while appellants further broadly assert that there is no caselaw that supports that a sole proprietorship can be found to be an alter ego of a person or a corporation, this argument is likewise without merit as other jurisdictions have, in fact, concluded that a sole proprietorship can be an alter ego. *See, e.g., Humphries v. Bray*, 611 S.W.2d 791, 793 (Ark. Ct. App. 1981) (holding that where a corporation was so managed and controlled by its sole owner as to constitute a sole

proprietorship, the corporate entity may be disregarded or looked upon as the alter ego of the principal stockholder.); *United Parcel Serv. of Am., Inc. v. Net, Inc.*, 225 F.R.D. 416, 421 (E.D.N.Y. 2005) ("In contrast to a corporation, a sole proprietorship has no separate existence, but rather exists as the so-called 'alter ego' of the owner.").

Based on the reasoning set forth above, we conclude that substantial evidence supports the district court's determination that Matley was entitled to declaratory relief providing that Schwedt and the appellant businesses were one and the same and, thus, were the alter egos of each other. *See LFC Mktg. Grp., Inc.*, 116 Nev. at 904, 8 P.3d at 846. Accordingly, we affirm that decision.

Denial of appellants' attorney fees and costs

We review the decision to grant or deny attorney fees for an abuse of discretion. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 967, 194 P.3d 96, 106 (2008). "A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (reviewing a district court's determination of who is the prevailing party for an abuse of discretion) (internal quotation marks and emphasis omitted). "To be a prevailing party, a party need not succeed on every issue." *Id.*

Here, appellants assert that they are the prevailing parties in the underlying action pursuant to the Guaranty of Lease, arguing that the district court's alter ego declaration does not ultimately affect Matley's outstanding judgment against Schwedt personally. Thus, appellants assert that the court abused its discretion in denying appellants' motion for

attorney fees and costs. But contrary to appellants' argument, Matley initiated the complaint seeking a declaration that the sole proprietorship and corporation were alter egos of Schwedt and ultimately prevailed on this issue as the court determined that the businesses entities and Schwedt were legally one and the same. *See id.* Thus, appellants' assertion that Matley did not obtain any benefit from the litigation is without merit, and the district court did not abuse its discretion in finding Matley to be the prevailing party and rejecting Schwedt's motion for attorney fees.

Therefore, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Kathleen A. Sigurdson, District Judge
Debbie Leonard, Settlement Judge
O'Mara Law Firm, P.C.
Law Offices of Mark Wray
Washoe District Court Clerk

[3]To the extent the parties raise other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.