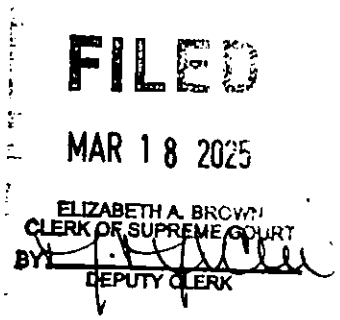
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN LUCKETT,
Appellant,
vs.
DOWNTOWN COLLISION, LLC; CESAR O'ACOSTA, SR.; CESAR O'ACOSTA, JR.; JOSE GUINERMO; JOSE G. FLORES AVARENGA; WALKER TOWING, INC.; E&E A/K/A SOUTH STRIP TOWING; QUALITY TOWING, A NEVADA LIMITED LIABILITY COMPANY; PHENOMENAL TOWING, LLC; FRIENDLY FORD, INC.; AND THE STATE OF NEVADA,
Respondents.

No. 88061-COA



ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

John Luckett appeals from district court orders dismissing his complaint with prejudice. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Luckett filed a civil complaint asserting that he was in a car accident in January 2021 when his vehicle went off a cliff. Following the accident, respondent Walker Towing towed and transported the vehicle to a tow yard in Henderson, Nevada. The vehicle was later towed by South Strip Towing to Friendly Ford, where the vehicle was stored until March 2021. Subsequently, Luckett contacted Downtown Collision (an auto repair business) and had an oral agreement with Downtown Collision[1] that he

[1]The complaint indicates that respondents Acosta and Alverenga were employees of Downtown Collision. Except as otherwise noted below,

would bring the vehicle to the business so that Luckett could get an estimate of the cost of repairs to his vehicle. And pursuant to this agreement, Luckett's vehicle was towed from Friendly Ford to Downtown Collision by Phenomenal Towing. Luckett alleges that Acosta instructed the tow truck driver from Phenomenal Towing to "[l]eave the car over there in the alley, we'll get it later," but Downtown Collision purportedly left the vehicle unattended and unlocked in the alley. Four days later, South Strip Towing towed the vehicle following a call from nonparty City of Las Vegas for unlawful parking in an alley as it appeared to have been abandoned. Luckett claims that his vehicle was "vandalized as his personalized license plates were removed and stolen." Luckett paid for the release of the vehicle from a storage lot and asserted that, after his vehicle was delivered to him, he noticed that at least $15,000 in valuables were missing from the vehicle.

Luckett's complaint asserted eight different causes of action: (1) "Breach of Oral Contract as to [Downtown Collision];" (2) "Malice;" (3) "Theft;" (4) "Negligence;" (5) "Bad Faith as to [Downtown Collision];" (6) "Intentional Infliction of Emotional Distress;" (7) "Fraud;" and (8) "Bailee Violation." Luckett sought approximately $330,000 in total damages, which included, among other things, towing and storage bills, lost/stolen valuables in the car, loss of use of the vehicle, intentional infliction of emotional distress, and punitive and compensatory damages.

Downtown Collision later filed a motion to dismiss Luckett's complaint and a motion for an order declaring Luckett to be a vexatious litigant and imposing sanctions on him. The motion asserted that, pursuant to NRCP 12(b)(5), Luckett's complaint failed to allege the necessary

---

Acosta, Alverenga, and Downtown Collision are hereafter collectively referred to as Downtown Collision.

elements for each of his causes of action and therefore should be dismissed. South Strip Towing and Walker Towing also filed motions to dismiss Luckett's claims against them. In addition, Downtown Collision, South Strip Towing, and Walker Towing all filed joinders to each other's motions to dismiss. Luckett filed an opposition to all the pending motions to dismiss and asserted that finding him vexatious would unjustly restrict his rights and violate his 14th Amendment right to due process. He further argued that the defendants were falsely denying liability.[2]

Subsequently, the district court held a hearing and entered several orders dismissing Luckett's complaint as to the various defendants. The court granted Downtown Collision's motion to dismiss, finding that Luckett's complaint failed to allege the necessary elements for each of his causes of action. Specifically, as to the first cause of action for breach of oral contract, the court found that Luckett failed to state a viable claim for breach of an oral contract as he did not plead an exchange of consideration and failed to allege that the parties entered into an agreement for defendants to store Luckett's vehicle over the four days that the vehicle was allegedly left on the street. With respect to Luckett's fourth cause of action for negligence, the district court found that Luckett failed to state a claim for negligence because he failed to allege that defendants had a duty to store, lock or otherwise protect his vehicle from theft, vandalism, and/or being towed. Thus, based on Downtown Collision's motion and the various joinders thereto, the court "dismiss[ed] the entire Complaint as to all

[2]We note that Phenomenal Towing, LLC; Friendly Ford, Inc.; and the State of Nevada did not appear in the action before the district court and thus are not parties to this matter.

Defendants and all claims with prejudice." The court also entered separate orders granting the other pending motions to dismiss. This appeal followed.

On appeal, Luckett fails to meaningfully address the dismissal of the majority of his claims beyond a summary assertion that there were triable issues of fact and therefore the case should have moved forward to trial. He also asserts, without explanation or analysis, that the court was "incompetent" in determining that there is "no such thing as a bailee and or bailment violation" in dismissing the "bailee violation" claim. Under these circumstances, we conclude that Luckett has failed to provide cogent argument asserting that the district court erred in dismissing his complaint as to his causes of action for malice, theft, bad faith, intentional infliction of emotional distress, fraud, and "bailee violation," and we therefore affirm the dismissal of these claims as to all of the parties. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing that appellate courts need not consider arguments that are not cogently presented).

Because Luckett does offer substantive argument as to the dismissal of his breach of oral contract claim, asserted against Downtown Collision, Acosta, and Alverenga, we now turn to address that issue.

"We review a district court order granting a motion to dismiss de novo." *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014). In doing so, we deem "all factual allegations in [the plaintiff's] complaint as true and draw all inferences in [the plaintiff's] favor." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A "complaint should be dismissed only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.*

Because Nevada is a "notice-pleading" jurisdiction, *see* NRCP 8(a), a complaint need only set forth a short and plain statement with sufficient facts to demonstrate the necessary elements of a claim for relief so that the opposing party "has adequate notice of the nature of the claim and relief sought." *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). Moreover, courts in Nevada will liberally construe pleadings, and "[a] plaintiff who fails to use the precise legalese in describing his grievance but who sets forth the facts which support his complaint thus satisfies the requisites of notice pleading." *Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (internal quotation marks omitted) (discussing Nevada's liberal notice pleading standard).

On appeal, Luckett argues the district court erred in dismissing his claim for breach of oral contract because the parties had a valid agreement and did not need to exchange money until the agreement was completed. "To prevail on a claim for breach of contract, the plaintiff must establish (1) the existence of a valid contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) that the breach caused the plaintiff damages." *Iliescu v. Reg'l Transp. Comm'n of Washoe Cnty.*, 138 Nev. 741, 458, 522 P.3d 453, 458 (Ct. App. 2022).

Here, Luckett's complaint alleged that he had an oral agreement with Downtown Collision to give him an estimate on repairs to his vehicle and that he was instructed to bring the vehicle to the business on March 27, 2021. Luckett further alleged that, although he did bring his vehicle to the business on the date agreed upon, Downtown Collision purportedly stated that they would get to the vehicle but never did. He also alleged that they allowed his vehicle to sit, unattended, in an alley by the

business for four nights until it was towed by the City of Las Vegas for unlawful parking in an alley, causing him to incur towing fees and leading to the vehicle being vandalized. Given the above noted allegations, we conclude that Luckett's complaint sufficiently alleged facts regarding each of the elements of a breach of contract claim. And taking Luckett's allegations as true, the facts Luckett set out in his complaint are sufficient to satisfy Nevada's notice pleading standard for pleading a breach of contract claim against Downtown Collision. *See Droge*, 136 Nev. at 308-09, 468 P.3d at 878.

In addition, to the extent the district court found that Luckett did not plead sufficient facts to demonstrate that the parties had an agreement because there was no explicit discussion of any exchange of consideration, such a finding was in error, as the facts alleged demonstrated an exchange of promises given that Luckett asserted that the parties had an oral agreement that Luckett would drop off his vehicle so that Downtown Collision would inspect the vehicle and provide him with an estimate as to costs to repair the vehicle. And such an exchange of promises is sufficient consideration to support the existence of an agreement. *See Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984) (explaining that consideration is the exchange of a promise or performance, bargained for by the parties).

Because parties may plead alternative theories, *see* NRCP 8(a) Luckett's claim for negligence incorporated the same facts as his claim for breach of an oral agreement, and we therefore review the dismissal of this claim as well based on Luckett's arguments made in support of his contract claim. "A claim for negligence in Nevada requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation,

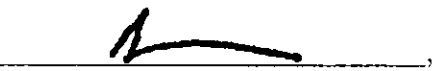
and (4) damages." *Turner v. Mandalay Sports Ent., LLC*, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008).

Here, Luckett's complaint plead facts as to these elements as he alleged that he brought his vehicle to Downtown Collision and Downtown Collision allowed his vehicle to sit unattended in an alley by the business for more than four nights until it was towed by the City of Las Vegas for unlawful parking, resulting in him incurring towing fees, and his vehicle being vandalized. Stated another way, Luckett alleged facts demonstrating that Downtown Collision negligently allowed his vehicle to be vandalized and then towed while it was under its care. And although the district court found, as Downtown Collision asserted below, that Luckett failed to state a claim for negligence because he failed to allege that defendants had a duty to store, lock or otherwise protect his vehicle from theft, vandalism, and/or being towed, we are not persuaded by this argument. As detailed above, Luckett alleged that he had an agreement with Downtown Collision to bring his vehicle to the business so that it could evaluate his vehicle for estimated repairs. Therefore, Luckett has sufficiently pleaded facts showing the existence of a duty of care as to Luckett's vehicle when it was in Downtown Collision's possession stemming from the alleged oral agreement to give him an estimate for repairs to the vehicle to allow his negligence claim to survive a motion to dismiss.

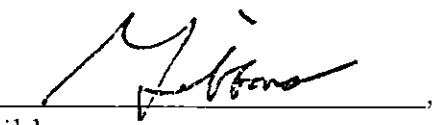
Accordingly, based on the reasoning set forth above, we conclude that the district court erroneously dismissed Luckett's breach of oral contract claim and negligence claim. *See Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672. As a result, we reverse the district court's dismissal of his breach of oral contract claim and negligence claim against Downtown Collision, Acosta, and Alverenga and remand this matter for further

proceedings as to this claim.[3] However, as discussed above, we affirm the district court's dismissal of all of Luckett's other claims as to all of the parties.

It is so ORDERED.[4]



_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

---

[3]Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file an answering brief, *see* NRAP 46A(c) (stating the same), in light of the basis for our reversal, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

[4]Insofar as Luckett 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.

cc: Hon. Timothy C. Williams, District Judge
John Luckett
Attorney General/Carson City
Bremer Whyte Brown & O'Meara, LLP/Las Vegas
Friendly Ford, Inc.
Law Office of Joseph P. Reiff
Angulo Law Group, LLC
Phenomenal Towing, LLC
Eighth District Court Clerk