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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD RAY PRICE,
Appellant,
vs.
FLAGSHIP CREDIT ACCEPTANCE, LLC,
Respondent.

No. 91208-COA

ORDER OF AFFIRMANCE

Richard Ray Price appeals from a final district court order in a breach of contract action. Eighth Judicial District Court, Clark County; Hon. Timothy C. Williams, Judge.

In April 2025, Price filed a complaint alleging claims of breach of contract—accord and satisfaction and negligent credit reporting. Price alleged that he sent his auto loan creditor, respondent Flagship Credit Acceptance, LLC (Flagship), a notice of recission and tendered Flagship three $660 check payments clearly marked in the memo line as payment in full for the $21,000 balance remaining on his automotive loan.[1] According to the complaint, Flagship deposited the checks without objection and nevertheless continued collection actions and made negative reports to credit bureaus. Price sought monetary damages and the correction of his credit reports.

Flagship moved to dismiss the complaint contending that even if all the alleged facts were true, Price had not pleaded claims upon which relief could be granted. It asserted that there was no plausible argument that an

[1]Price attached the check and notice to the complaint.

accord and satisfaction occurred pursuant to NRS 104.3311 as alleged. Flagship asserted that the amount of the claim was not subject to a bona fide dispute and Price did not tender payment in good faith. Further, Flagship asserted that Price did not show that the instrument contained a conspicuous statement that it was tendered in full satisfaction. As to his negligent reporting claim, Flagship alleged that Price failed to state a claim because such a claim has not been recognized in Nevada and it was entirely based on his accord and satisfaction claim, which was itself deficient. Lastly, Flagship sought attorney fees.

The district court granted the motion to dismiss, determining that Price failed to state any claims upon which relief could be granted for the reasons set forth in Flagship's motion to dismiss. Specifically, the court found that Price did not set forth sufficient allegations to establish the elements of the asserted claims. It further found that Price's notations on loan payments that the payments were in full satisfaction of the outstanding $21,000 debt cannot be construed as good faith payments in full satisfaction. The district court also determined that Price's payments were sent to a third-party processor that lacked the authority to accept the payments as full accord and satisfaction of the debt.

Price timely moved to reconsider dismissal pursuant to NRCP 59(e). Flagship opposed the motion, maintained that the district court properly dismissed the complaint, and renewed its request for attorney fees. Flagship also included exhibits substantiating the amount of fees it requested.

The district court subsequently denied the NRCP 59(e) motion. The court determined that Price's claims were brought without reasonable grounds, he failed to sufficiently plead the claims, and the motion to reconsider was procedurally defective. The court accordingly elected to award Flagship attorney fees pursuant to the attorney fees provision contained within the credit agreement that applied to this matter and under NRS 18.010(2)(b). The district court also considered the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and found that Flagship met its burden of demonstrating that $28,979.50 in fees were reasonable. This appeal followed.

On appeal, Price challenges the dismissal of his complaint.[2] A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (discussing Nevada's liberal notice pleading standard). Dismissing a complaint is appropriate "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." *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672. We review legal conclusions de novo. *Id.*

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[2]Price filed a notice of appeal from the district court order denying his motion for reconsideration but did not file a notice for the order dismissing his complaint. However, because the motion for reconsideration was timely filed, it tolled the time for filing a notice of appeal from the order of dismissal. *See* NRAP 4(a)(5)(A)(iii) (explaining that an NRCP 59(e) motion to alter or amend the judgment tolls the time for filing a notice of appeal); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (recognizing that a timely-filed post-judgment motion for reconsideration or certain other relief that seeks a substantive change to the challenged order qualifies as a tolling motion under NRCP 59(e)); *see* NRAP 4(a)(5)(B)(i) (a notice of appeal becomes effective to appeal a final order upon entry of an order resolving the last remaining tolling motion).

Price contends that the district court failed to accept his allegations as true as required in dismissing his accord and satisfaction claim. He argues that the court instead made factual determinations about the validity of the dispute, whether he tendered the amount in good faith, and the authority of the third-party payment processor. Specifically, he asserts that the court improperly required allegations concerning a "meeting of the minds" between the parties and a separate document establishing the accord and satisfaction.

Breach of contract is the material failure to perform "a duty arising under or imposed by agreement." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (internal quotation marks omitted). Accord and satisfaction may be asserted as an affirmative defense to a breach of contract claim. NRCP 8(c)(1)(A).

> To successfully establish the fact of an accord and satisfaction with regard to an unliquidated claim, the general rule is that a litigant must satisfy three elements, to wit: 1) a bona fide dispute over an unliquidated amount; 2) a payment tendered in full settlement of the entire dispute; and 3) an understanding by the creditor of the transaction as such, and acceptance of the payment.

Pierce Lathing Co. v. ISEC, Inc., 114 Nev. 291, 297, 956 P.2d 93, 97 (1998); *see* NRS 104.3311 (setting forth requirements for accord and satisfaction by use of an instrument). A party pleading accord and satisfaction "must bear the burden of proof and must establish *clearly* that there was a meeting of the minds of the parties, accompanied by a sufficient consideration." *Walden v. Backus*, 81 Nev. 634, 637, 408 P.2d 712, 713-14 (1965) (emphasis in original); *see Pierce Lathing*, 114 Nev. at 297, 956 P.2d at 97 ("Central to the issue, however, is that a meeting of minds with regard to a resolution of the claim be proved.").

Price fails to demonstrate that the district court erred in dismissing the accord and satisfaction claim. Price did not assert a defense of accord and satisfaction in response to a claim by Flagship, *see* NRCP 8(c)(1)(A), but instead pursued it as an independent cause of action. Assuming, without deciding, that accord and satisfaction can be pursued as a cause of action, as noted previously, Price's claim below did not allege a bona fide dispute over the amount owed. Nor did Price allege that the parties entered into an agreement to settle that dispute. Instead, according to the complaint, Price extended an offer of recission from the existing credit agreement by sending the payment processor a notice and payments with a notation. Nevertheless, Price alleged that Flagship continued to operate under the existing credit agreement and treated Price's payments as payments under the agreement, not as full accord and satisfaction, and reported Price's failure to make subsequent payments to the credit bureaus.

However, the aforementioned allegations were insufficient to show that Flagship was required accept Price's offer of recission. *See* Restatement (Second) of Contracts § 69 cmt. a (Am. Law. Inst. 1981) ("The mere receipt of an unsolicited offer does not impair the offeree's freedom of action or inaction or impose on him any duty to speak."). Therefore, Price failed to allege a clear meeting of the minds occurred on whether Price's payments would be accepted as full satisfaction of his debt. *See Pierce Lathing*, 114 Nev. at 297, 956 P.2d at 97; *Walden*, 81 Nev. at 637, 408 P.2d at 713-14; *see also Morris DeLee Family Tr. v. Cost Reduction Eng'g, Inc.*, 101 Nev. 484, 486-87, 705 P.2d 161, 163 (1985) (observing that an accord and satisfaction "can never be implied from language of doubtful meaning" and requiring substantial evidence to support a finding that the parties intended an agreement to be an accord and satisfaction). Accordingly, Price fails to demonstrate the district court erred by dismissing this claim.

Next, Price contends the district court erred in denying his negligent reporting claim, which he argues was raised under the Fair Credit Reporting Act (FCRA). He contends his complaint alleged a disputed debt; Flagship, as the furnisher, failed to investigate after notice and continued to inaccurately report; and he suffered concrete reputational harm as a result. He contends that the district court improperly dismissed his complaint solely because it dismissed the accord and satisfaction claim.

In his complaint, Price's negligent reporting claim incorporated his general factual allegations and alleged that Flagship had a duty to ensure accurate reporting of his account status, Flagship reported "derogatory information to credit bureaus after a settlement was reached," and Flagship failed to correct the false information. To the extent this claim relies on the accord and satisfaction allegations, it was properly dismissed for the reasons discussed above: Price did not allege a disputed amount or claim or a meeting of the minds between he and Flagship regarding resolution of that claim.

To the extent Price asserts the negligent reporting claim is an FCRA claim, Price's allegations were insufficient. The FCRA does not provide a private cause of action against furnishers of information to credit reporting bureaus for reporting inaccurate information. *See* 15 U.S.C. § 1681s-2(a), (d); *Peasley v. Verizon Wireless LLC*, 364 F. Supp. 2d 1198, 1200 (S.D. Cal. 2005) ("Courts have consistently held that for the duty imposed by § 1681s-2(b) to be triggered, the furnisher of information must have received notice of the dispute from a consumer reporting agency, not from the consumer."). Price could only pursue a remedy under the FCRA against Flagship if Flagship failed to or inadequately investigated disputed information upon receiving a report *from* a credit bureau. *See* 15 U.S.C. § 1681s-2(b). Price did not allege that he disputed his credit reports with the credit bureaus, that Flagship failed to conduct an adequate investigation upon receiving the dispute from the credit bureau, or that Flagship failed to report the results of its investigation upon completion. Accordingly, Price fails to demonstrate that the district court erred in dismissing this claim.[3]

Lastly, Price contends that the attorney fee award was improper. He asserts that his claims were not groundless, were adequately pleaded to survive the motion to dismiss, and thus, the district court abused its discretion in awarding attorney fees to Flagship. He also asserts that Flagship unnecessarily prolonged the litigation by mischaracterizing NRS 104.3311 during a hearing.

This court reviews awards of attorney fees for an abuse of discretion. *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 485, 851 P.2d 459, 464 (1993). A district court abuses its discretion when its findings are not supported by substantial evidence. *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018). The district court may only award attorney fees where a statute, rule, or contract allows it. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006). "Whether a contract authorizes attorney fees is a question of law reviewed de novo." *Pardee Homes of Nev. v. Wolfram*, 135 Nev. 173, 178, 444 P.3d 423, 427 (2019).

Moreover, under NRS 18.010(2)(b), the district court may award attorney fees to a "prevailing party" when "the court finds that the claim . . . of

[3]To the extent Price challenges the district court's decision to deny his motion for reconsideration, we conclude he fails to demonstrate the district court abused its discretion. *See AA Primo Builders*, 126 Nev. at 589, 245 P.3d at 1197.

the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." There must be evidence in the record supporting the proposition that a claim was brought or maintained without reasonable grounds. *Chowdhry*, 109 Nev. at 486, 851 P.2d at 464. "For purposes of NRS 18.010(2)(b), a claim is frivolous or groundless if there is no credible evidence to support it." *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009). In addition, when awarding attorney fees, the district court must consider the factors set forth in *Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

In its order denying the motion for reconsideration, the district court noted that the credit agreement that formed the basis of Price's credit obligation provided for an award of attorney fees to Flagship should it prevail after the parties engage in litigation. The court also stated that it considered the *Brunzell* factors and found that Flagship met its burden of demonstrating that the $28,979.50 incurred by Flagship was reasonable.

Price does not challenge the court's findings as to the award amount, or that the fees were authorized by the credit agreement. Instead, his argument hinges on his contention that the district court erred in dismissing his complaint, which, as discussed above, it did not. The remainder of his argument does not explain how Flagship mischaracterized NRS 104.3311 during the hearing on the motion to reconsider or refused to address credit reporting facts and how those actions unnecessarily prolonged the litigation. In light of Price's failure to present cogent argument concerning those issues or challenge the district court's award of fees under the attorney fees provision of the credit agreement, we conclude he fails to demonstrate he is entitled to relief. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument); *see also Hung v. Genting Berhad*, 138 Nev. 547, 549-50, 513 P.3d 1285, 1287-88 (Ct. App. 2022) (providing that an appellant generally must challenge all the independent alternative grounds relied upon by the district court, otherwise the ruling will be affirmed). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Timothy C. Williams, District Judge
Fox Rothschild, LLP/Las Vegas
Hutchison & Steffen, LLC/Las Vegas
Richard Ray Price
Eighth District Court Clerk