



IN THE SUPREME COURT OF THE STATE OF NEVADA

DAWN JOHNSON, AN INDIVIDUAL,
Appellant,
vs.
MARLON STEELE, AS TRUSTEE OF
THE ROYAL UNION TRUST; THE
ROYAL UNION TRUST, A NEVADA
TRUST; AND ROYAL UNION
PROPERTIES, LLC, A NEVADA
DOMESTIC LIMITED-LIABILITY
COMPANY,
Respondents.

No. 89325

ORDER OF AFFIRMANCE

This is an appeal from a district court final judgment in an action concerning the sale of membership interests in a Nevada Limited Liability Company. Eighth Judicial District Court, Clark County; Michael Villani, Nancy Allf, and Joseph Hardy, Jr., Judges.

The district court granted summary judgment in favor of respondents (collectively, Royal Union) and against appellant Dawn Johnson on her fraud-based counterclaims. Having reviewed the parties' briefs and the record, we perceive no reversible error in the district court's decision. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment and recognizing that summary judgment is proper when no genuine issue of material fact exists).

As the parties agree, a viable fraud claim requires a plaintiff to prove justifiable reliance on a material misrepresentation or omission by the defendant. *See Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (recognizing that the elements of a fraud claim are (1) a

false representation made by the defendant; (2) the defendant's knowledge or belief that the representation is false (or insufficient basis for making the representation); (3) the defendant's intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation; (4) the plaintiff's justifiable reliance upon the misrepresentation; and (5) damages to the plaintiff resulting from such reliance). The parties also do not dispute that the justifiable-reliance element is necessarily intertwined with the material-misrepresentation/omission element. In other words, for Johnson to establish prima facie evidence that she justifiably relied on a material misrepresentation or omission in Royal Union's Solicitation Letter, she must identify what that particular misrepresentation or omission was.

Johnson has not identified a particular statement in the Solicitation Letter upon which she relied. Given that failure, we are not persuaded that Johnson justifiably relied on any such misrepresentation or omission in Royal Union's Letter when she decided to sell her interest in Essex. In this, we conclude the authorities cited by Johnson—*Epperson v. Roloff*, 102 Nev. 206, 719, P.2d 799 (1986), the Restatement (Second) of Torts, § 533 (1977), and extra-jurisdictional caselaw addressing the doctrine of third-party reliance—are inapposite. Namely, Johnson has not identified a particular portion of the Solicitation Letter that her ex-husband conveyed to her and upon which she justifiably relied. The Statement of Facts for Johnson's opening brief briefly mentions the Letter's statement that, "For all intent, the property and investment were deemed worthless (and abandoned)." But Johnson does not address this statement's potential relevance. See NRAP 28(a)(10) (requiring an appellant's brief to provide an argument section identifying the district court's alleged errors). Moreover, Johnson did not identify this statement in her district court filings, such

that waiver applies. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (arguments not raised in district court are generally deemed waived on appeal).

Although Johnson points to 13 other statements in the Solicitation Letter, as with the “deemed worthless” statement, the potential relevance of these statements was not addressed in district court and has not been coherently briefed on appeal. Nor is it self-evident how Johnson could have justifiably relied on any of those statements, as she acknowledged in her deposition that she had not seen the Solicitation Letter and had not otherwise relied on any information in it that was conveyed to her. *Bulbman*, 108 Nev. at 111, 825 P.2d at 592; *cf. Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (observing that it is a party’s responsibility to present cogent arguments supported by salient authority). Accordingly, the district court correctly determined that no material factual dispute remained as to whether Johnson justifiably relied on any material misrepresentation or omission in the Solicitation Letter. *Cf. Wood*, 121 Nev. at 729, 121 P.3d at 1029 (observing that, at the summary judgment stage only “reasonable” inferences may be drawn from the nonmoving party’s evidence).

Johnson alternatively argues that summary judgment was improper because the district court subsequently granted summary judgment in favor of Johnson’s ex-husband on his identical counterclaims against Royal Union. According to Johnson, these judgments are logically inconsistent, such that the judgment against her should be reversed. But as Johnson acknowledges, the judgment in favor of her ex-husband was based on “additional evidence” that was discovered after the judgment was entered against her. We cannot fault the district court for granting

summary judgment against Johnson based on the evidence that was available to it at the time. And, as discussed above, Johnson's summary judgment opposition failed to identify a particular misrepresentation or omission in the Solicitation Letter, much less explain how she justifiably relied on it. Thus, while the two judgments are facially at odds, we are not persuaded that this alone warrants reversal of the judgment against Johnson.

To the extent that this disposition has not specifically addressed all of Johnson's arguments, we are not persuaded that those arguments warrant reversal. Consistent with the foregoing, we

ORDER the judgment of the district court AFFIRMED.

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Herndon, C.J.

A handwritten signature in dark ink, appearing to be 'Stiglich', written in a cursive style.

Stiglich, J.

A handwritten signature in dark ink, appearing to be 'Cadish', written in a cursive style.

Cadish, J.

cc: Hon. Joseph Hardy, Jr., District Judge
Jay Young, Settlement Judge
Fox Rothschild, LLP/Las Vegas
Law Offices of Byron Thomas
Eighth District Court Clerk