

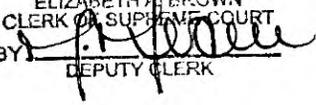
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NANCY HAACK, AN INDIVIDUAL,  
Appellant,  
vs.  
SEAN EVENDEN, AN INDIVIDUAL;  
AND ROGER AYALA, AN INDIVIDUAL,  
Respondents.

No. 85263-COA

**FILED**

NOV 28 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Nancy Haack appeals from an order of the district court granting respondents' motion for new trial pursuant to NRCP 59(a). Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Haack and NRS Realty Group filed a complaint alleging that they were entitled to money damages stemming from claims concerning the deterioration of a business relationship between Haack, respondent Sean Evenden, and respondent Roger Ayala. Haack, Evenden, and Ayala entered into an operating agreement and together operated NRS Realty Group, a limited liability company. The members had a disagreement concerning the terms of a lease agreement and the potential expansion of their business. The members were unable to reach a mutual agreement concerning those issues and the business relationship between the three members deteriorated. As a result, Evenden and Ayala (collectively referred to as respondents) started a new realty business without Haack while simultaneously running NRS Realty Group with Haack. Eventually, respondents made additional decisions concerning the funds and property

that belonged to NRS Realty Group, and Haack did not participate in those decisions.

Haack and NRS Realty Group filed this lawsuit and alleged that respondents' actions and decisions in the aftermath of the deterioration of the business relationship amounted to breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duties. Haack and NRS Realty Group also contended that respondents committed conversion, and Haack alleged that she was entitled to an accounting of the assets of NRS Realty Group.

The matter proceeded to a bench trial. NRS Realty Group was represented by counsel but Haack proceeded in pro se. During trial, Haack and respondents testified concerning their business relationship, the operation of NRS Realty Group, and their actions following the deterioration of their business relationship. Relevant to this matter, and despite the objection of respondents, the district court admitted into evidence email correspondence between counsel that previously represented Haack and counsel for respondents that contained the terms of a settlement offer.

Following the bench trial, the district court entered a written order containing its findings. The district court concluded that respondents breached the implied covenant of good faith and fair dealing, breached their fiduciary duties, and improperly utilized NRS Realty Group funds to pay for their legal defense. The district court also found that respondents did not provide a proper accounting of NRS Realty Group's financial situation during the proceedings and, as a result, the court was unable to make a proper valuation of the company or assess whether it had appropriately

distributed profits to the members. The court therefore did not award damages at that time. Instead, the court directed NRS Realty Group to undergo an independent accounting and ordered respondents to pay Haack one third of the profits and value of NRS Realty Group as determined by the independent accounting.

Respondents appealed from entry of the district court's order following the bench trial, but the Nevada Supreme Court dismissed the appeal for lack of jurisdiction because the order did not actually award damages and contemplated further proceedings to determine the appropriate amount of damages. *Evenden v. Haack*, No. 81473, 2021 WL 1531175 (Nev. Apr. 16, 2021) (Order Dismissing Appeal).

Relevant to this appeal, the district court case was transferred from Hon. Stefany Miley to Hon. Timothy C. Williams. Judge Williams, as the district court judge assigned to this matter, requested additional briefing concerning the monetary damages and subsequently entered a written order concerning that issue.

In the written order, the district court noted that the information presented at trial demonstrated that respondents provided an accounting of NRS Realty Group during pre-trial discovery. And the court found that the decision to direct an independent accounting of NRS Realty Group was improper and that the damages award should be limited to information presented at trial. The court also noted that the order following the bench trial did not appear to take into account the limitations on liabilities contained within NRS Chapter 86 for members of a limited liability company. Despite those concerns, based on the trial record and the order entered following the bench trial, the court found that respondents

were liable to Haack for money damages in the amount of \$247,253.33 for their breach of the implied covenant of good faith and fair dealing and the breach of their fiduciary duties. The court also found that respondents were liable for money damages in the amount of \$160,475.78 for utilizing funds drawn from NRS Realty Group to pay for their defense, but the court did not specifically state whether those damages were owed to Haack or NRS Realty Group.

Following entry of the district court's order concerning monetary damages, respondents filed a motion for a new trial pursuant to NRCP 59(a). Haack and NRS Realty Group opposed the motion. The court conducted a hearing concerning the motion and later entered a written order granting the respondents' request for a new trial pursuant to NRCP 59(a). The court found that there were multiple irregularities in the proceedings that prevented respondents from having a fair trial and that an error in the law occurred despite the objections of respondents. *See* NRCP 59(a)(1)(A), (G). The court further explained that it found the following irregularities and errors prevented a fair trial: (1) the decision to admit communications concerning a settlement offer over respondents' objections; (2) the decision to order an accounting of NRS Realty Group after the conclusion of trial; (3) conflating Haack, as an individual, with NRS Realty Group, an entity separate from Haack; and (4) the failure to consider that NRS Chapter 86 does not set out fiduciary duties owed by and between its members. And because those irregularities and errors prevented respondents from receiving a fair trial, the court concluded a new trial was warranted. This appeal followed.

First, Haack argues that the district court erred by granting respondents' motion for new trial. Haack contends that the court made no findings to support its decision to grant a new trial.

“This court reviews a district court’s decision to grant or deny a motion for a new trial for an abuse of discretion.” *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014); *see also S. Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978) (stating the decision to grant or deny a new trial is within the discretion of the trial court and cannot be disturbed on appeal “absent palpable abuse”). Among the grounds for a new trial under NRCP 59(a) are an “irregularity in the proceedings of the court . . . or in any order of the court . . . , or any abuse of discretion by which either party was prevented from having a fair trial,” as well as an “error in law occurring at the trial and objected to by the party making the motion,” if the court’s actions materially affected the moving party’s substantial rights. NRCP 59(a)(1)(A), (G); *see also Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 263-64, 396 P.3d 783, 786 (2017) (“[E]ven if one of NRCP 59(a)’s new-trial grounds has been established, the established ground must have materially affect[ed] the substantial rights of [the] aggrieved party to warrant a new trial.” (second and third alterations in original) (internal quotation marks omitted)).

Contrary to Haack’s assertion, as explained previously, the district court found multiple irregularities and errors of law, and it provided specific explanations in support of its findings. The court also found the irregularities and errors of law so prejudiced respondents that a new trial was warranted.

On appeal, Haack does not identify any specific contention of error concerning the district court's decision to grant respondents' motion for new trial and she has neglected to address any of the specific grounds upon which the district court based its decision to order a new trial. Haack has thus failed to set forth any cogent argument in support of her assertion that the district court erred by granting a new trial, and this court need not consider her bare allegations. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument).

Because the district court's decision to grant respondents' request for a new trial was supported by specific findings, and because Haack does not cogently challenge those findings, we conclude that Haack fails to demonstrate that the court abused its discretion by granting the motion for new trial. *See Gunderson*, 130 Nev. at 74, 319 P.3d at 611. Accordingly, we conclude that Haack is not entitled to relief based on this claim.

Second, Haack argues that Judge Williams should not have reconsidered decisions made by Judge Miley and, because a decision to grant the respondents' request for a new trial involved the reconsideration of Judge Miley's decisions, it was error to order a new trial in this matter.

As stated previously, NRCP 59(a) permits a district court to order a new trial if irregularities or legal errors prevented a party from receiving a fair trial. Moreover, "[a] district court may reconsider a previously decided issue if . . . the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Judge Williams had the authority

pursuant to NRCP 59(a) to review the trial rulings and to order a new trial based upon a finding that irregularities and legal errors prejudiced respondents' ability to receive a fair trial. Under the circumstances at issue in this matter, Haack fails to demonstrate that prior decisions should not have been reconsidered by a new district court judge. Therefore, we conclude that Haack is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>1</sup>Insofar as Haack 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.

In addition, we have reviewed all documents Haack has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Haack attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Timothy C. Williams, District Judge  
Nancy Haack  
The VerStandig Law Firm, LLC  
Eighth District Court Clerk