

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEBORAH CARROLL,
Appellant,
vs.
JEROME MAX MANDEL,
Respondent.

No. 68114

FILED

NOV 02 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an amended complaint in a lien and contracts action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

After appellant filed an amended complaint for breach of contract and to enforce a lien on respondent's property, respondent filed a motion to dismiss. Appellant sought a continuance in order to oppose the motion to dismiss less than a week before the hearing on the motion, but never filed an opposition. The district court ultimately took appellant's failure to file an opposition as an admission that respondent's motion was meritorious and dismissed the case. See EDCR 2.20(e) ("Failure of the opposing party to serve and file written opposition [to a motion] may be construed as an admission that the motion . . . is meritorious and a consent to granting the same."). The district court also denied appellant's later motion for reconsideration. This appeal followed.¹

¹We have reviewed respondent's argument regarding the timeliness of the reconsideration motion and our jurisdiction over this appeal and conclude it is without merit, as both the motion for reconsideration and the notice of appeal were timely filed in district court.

Having reviewed the record and the parties' briefs, we conclude that the district court did not abuse its discretion² in dismissing appellant's complaint for failure to file an opposition. See *King v. Cartridge*, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (reviewing a district court order granting summary judgment based on the opposing party's failure to file an opposition under an abuse of discretion standard). Here, although the district court filed its written order granting appellant's counsel's motion to withdraw shortly before respondent filed his motion to dismiss, the court had previously orally granted the motion to withdraw. Moreover, appellant failed to file even an untimely opposition³ for the court's consideration. Under these facts, we cannot conclude that the district court abused its discretion in dismissing

²Although appellant argues for a different standard of review, her supporting citations all concern dismissals as sanctions. Because this dismissal was based on appellant's failure to oppose the dismissal motion, rather than as a sanction for dilatory or abusive litigation practices, we conclude that her argument is without merit.

³Appellant's request for a continuance cannot be considered an opposition as appellant suggests because it did not contain a memorandum of points and authorities demonstrating why the motion to dismiss should be denied. EDCR 2.20(e). And, even if it could be considered an opposition, the fact that it was untimely still gave the court the discretion to grant the dismissal motion as unopposed. See *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278 n.15, 182 P.3d 764, 768 n.15 (2008) (concluding that a court did not abuse its discretion in granting a motion for failure to oppose even when an untimely opposition was filed).


appellant's complaint for failure to oppose the motion to dismiss.⁴ *See id.* at 928, 124 P.3d at 1162 (providing that failing to timely file an opposition “alone was sufficient grounds for the district court to deem [the] motion unopposed and thus meritorious” (emphasis added)).

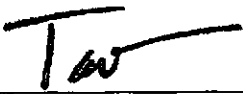
We further conclude that the district court did not abuse its discretion in denying appellant's motion for reconsideration of the order granting the dismissal. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584-85, 589, 245 P.3d 1190, 1194, 1197 (2010) (recognizing that the denial of a timely motion for reconsideration of a final judgment can be reviewed, in the context of an appeal from that judgment, under an abuse of discretion standard). Much of appellant's motion focused on the merits of her claims, rather than the propriety of the district court's dismissal based on EDCR 2.20(e). Further, appellant did not present any new evidence regarding the failure to file an opposition or demonstrate that the court's decision to dismiss based on that failure was clearly erroneous. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (“A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.”).


⁴Because appellant's argument that the district court abused its discretion by dismissing her complaint with prejudice was not raised until the reply brief, we decline to consider it. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised in an opening brief are deemed waived).

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
William C. Turner, Settlement Judge
Reid Rubinstein Bogatz
Angius & Terry LLP/Las Vegas
Eighth District Court Clerk

⁵To the extent any of appellant's arguments regarding the dismissal of the underlying case based on her failure to file an opposition are not specifically addressed herein, we have considered those arguments and conclude they are without merit. And in light of our resolution of this matter, we need not address the parties' arguments as to the merits of the underlying complaint and motion to dismiss.