

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD W. DRAKE,
Appellant,
vs.
TERRY ALLEN,
Respondent.

No. 69159

FILED

NOV 22 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART AND DISMISSING IN PART

This is an appeal from a post-judgment district court order granting attorney fees and costs.¹ Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Below, appellant failed to timely oppose respondent's requests for attorney fees and costs,² which the court took as an admission that the requests were meritorious and, thus, granted the same. See DCR 13(3) ("Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent

¹Appellant also seeks to appeal the portion of this order that denied his post-judgment motion to amend his complaint. But because such an order is not substantively appealable, we lack jurisdiction to consider his appeal as to that portion of the district court's order, and we therefore dismiss his appeal of that ruling. See NRAP 3A(b) (listing appealable civil orders); *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209; 678 P.2d 1152, 1153 (1984) (providing that a right to appeal only exists if a rule or statute authorizes the appeal).

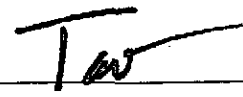
²The Nevada Supreme Court previously affirmed the dismissal of appellant's complaint. See *Drake v. Allen*, Docket Nos. 64854 & 65602 (Order Dismissing in Part, Affirming in Part, and Remanding, May 20, 2015). Accordingly, we do not address appellant's arguments regarding the merits of the underlying complaint.

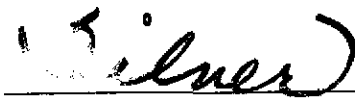
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to granting the same.”). On appeal, appellant makes no argument that the district court abused its discretion in awarding fees and costs pursuant to DCR 13(3). See *Gunderson v. D.R. Horton, Inc.*, 130 Nev. ___, ___, 319 P.3d 606, 615 (2014) (reviewing an award of attorney fees and costs for an abuse of discretion). By failing to present arguments against the award pursuant to DCR 13(3), appellant has waived any such arguments and we necessarily affirm the award of fees and costs to respondent. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that an argument not raised in an opening brief is waived).

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Scott N. Freeman, District Judge
Richard W. Drake
Kent Law
Washoe District Court Clerk

³We deny each party’s request to sanction the other.