

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID M. FROSTICK,  
Appellant,  
vs.  
DAVID M. SCHIECK, SPECIAL  
PUBLIC DEFENDER,  
Respondent.

No. 71500

**FILED**

APR 28 2017

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

No. 71501 ✓

DAVID M. FROSTICK,  
Appellant,  
vs.  
DREW CHRISTENSEN; DAN WINDER;  
AND ARNOLD WEINSTOCK,  
Respondents.

*ORDER OF AFFIRMANCE*

In these unconsolidated appeals, appellant David M. Frostick challenges separate district court orders dismissing complaints alleging legal malpractice and civil rights violations. Eighth Judicial District Court, Clark County; Rob Bare and Jerry A. Wiese, Judges.

Frostick filed two separate district court complaints alleging that respondents in both cases had violated his civil rights and committed legal malpractice during the course of their representation of appellant in his criminal case. In both cases, the district court dismissed the actions because Frostick failed to oppose respondents' motions to dismiss and because he failed to state a claim upon which relief could be granted. These appeals followed.

In both appeals, Frostick asserts that he did not receive any of the motions to dismiss filed in the underlying cases and that respondents

failed to prove that they properly served the motions. And because he did not receive the motions, he argues that the district court erred in dismissing the complaints based on his failure to respond. We disagree. The record demonstrates that each of the motions to dismiss included a certificate of service indicating that Frostick had properly been served with these motions. See NRCP 5(b)(4) (providing that proof of service may be made by filing a certificate that the motion was served). And because Frostick failed to file any oppositions to the properly-served motions to dismiss, the district court did not abuse its discretion in dismissing the underlying actions based on Frostick's failure to oppose. See EDCR 2.20(e) (providing that the district court may construe a party's failure to timely oppose a motion "as an admission that the motion . . . is meritorious and a consent to granting the same"); *King v. Cartlidge*, 121 Nev. 926, 927-28, 124 P.3d 1161, 1162-63 (2005) (reviewing a district court's grant of a motion under a rule identical to EDCR 2.20(e) for an abuse of discretion and concluding that the failure to timely oppose a motion, in and of itself, is a sufficient ground to deem the motion unopposed and therefore meritorious).


Further, both of the challenged orders also included findings that dismissal of the underlying cases was appropriate because Frostick's complaints failed to state claims upon which relief could be granted. See NRCP 12(b)(5) (allowing dismissal of a complaint for failure to state a claim); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing the standard for granting NRCP 12(b)(5) motions to dismiss). Because Frostick has not challenged those findings in his appeals, he has waived any such arguments. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011)

("Issues not raised in an appellant's opening brief are deemed waived."). As a result, we necessarily conclude that the district court did not err in granting respondents' motions to dismiss based on Frostick's complaints failing to state a claim upon which relief could be granted. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672 (giving de novo review to the legal conclusions that support an NRCP 12(b)(5) dismissal).

Thus, for the reasons set forth above, we affirm the dismissal orders in Docket Nos. 71500 and 71501.

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Rob Bare, District Judge  
Hon. Jerry A. Wiese, District Judge  
David Michael Frostick  
The Law Office of Dan M. Winder, P.C.  
Clark County District Attorney/Civil Division  
Eighth District Court Clerk

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<sup>1</sup>Having reviewed the "General Power of Attorney" Frostick filed in both dockets on February 13, 2017, no action is being taken on those filings.