

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHARON HOLMES, INDIVIDUALLY
AND AS TRUSTEE OF THE ATL-ATL
TRUST,

Appellant,

vs.

COUNTRYWIDE HOME LOANS; BANK
OF AMERICA HOME LOAN
SERVICING, LP; BANK OF AMERICA,
N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
RECONTRUST COMPANY, N.A.;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION (FANNIE MAE);
SETERUS; AND QUALITY LOAN
SERVICES CORP.,

Respondents.¹

No. 74810-COA

FILED

MAR 14 2019

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

ORDER OF AFFIRMANCE

Sharon Holmes appeals from a district court summary judgment in a real property matter. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Holmes acquired certain real property by quitclaim deed, subject to a first deed of trust. After a notice of default was recorded against the property, Holmes sued respondents and effectively moved for a temporary restraining order or preliminary injunction. For support,

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

Holmes presented various allegations regarding the mortgage industry and the origination of her note and she further alleged that respondents were improperly attempting to enforce the deed of trust and underlying note against her. Respondents moved for dismissal or summary judgment, asserting that Holmes failed to state a claim for various reasons.

The district court determined that Holmes' complaint failed insofar as it presented claims to challenge respondents' loan documentation and the securitization of the note as well as claims for predatory lending, unfair lending practices, and violation of the Fair Debt Collection Practices Act (FDCPA). In particular, the district court reasoned that supreme court precedent barred Holmes' claims to challenge respondents' loan documentation and the securitization of the note, that Holmes' predatory lending and unfair lending practices claims were barred by the relevant statute of limitations, and that her FDCPA claim failed because respondents conduct did not involve prohibited debt collection practices. Thus, the district court granted respondents' summary judgment and further denied Holmes' request for a temporary restraining order or preliminary injunction. This appeal followed.

On appeal, Holmes presents argument regarding the mortgage industry and the merits of her claims, but she does not challenge the district court's construction of her claims or its bases for summary judgment. 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 on appeal are deemed waived). Instead, Holmes seeks reversal on various procedural grounds.

For example, Holmes maintains that the district court's resolution of her case was improper since respondents did not answer her complaint. But respondents elected to seek dismissal before filing an answer, *see* NRCP 12² (providing that, if a defendant brings a motion to dismiss for failure to state a claim within the time for filing an answer, the defendant need not file an answer until 10 days after the district court denies the motion), and Holmes does not assert that their request for such relief was untimely. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Holmes also contends that the district court should not have granted respondents summary judgment without permitting her an opportunity to conduct discovery. But Holmes did not seek leave to conduct discovery below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983

²On December 21, 2018, the Nevada Supreme Court amended the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure, effective March 1, 2019. *See In re Creating a Comm. To Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). But those amendments do not affect the disposition of this appeal, as they became effective after the district court granted respondents' summary judgment motion.


(1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).

Insofar as Holmes asserts that the district court improperly resolved her case in chambers and that, in doing so, the court violated her right to a jury trial and relied on an inappropriate ex parte communication, we discern no basis for relief. Indeed, because Holmes failed to timely oppose respondents’ motion to dismiss or for summary judgment, the district court could properly resolve their motion in chambers without oral argument. See EDCR 2.23 (providing that, in the absence of a timely opposition, the district court may resolve a motion at any time with or without oral argument). Moreover, given Holmes’ failure to challenge the district court’s rationale for concluding that each of her claims failed, she cannot establish that the court was required to permit her case to proceed to a jury trial. See *Junk v. Terminix Int’l Co.*, 628 F.3d 439, 450 (8th Cir. 2010) (explaining that summary judgment does not violate the plaintiff’s right to a jury trial where the defendant is entitled to judgment as a matter of law). And despite Holmes’ assertion that the district court took argument from respondents’ counsel in chambers without her present, the district court minutes that were transmitted to this court pursuant to NRAP 3(g) (requiring the district court clerk, upon the filing of a notice of appeal, to transmit certain documents to the clerk of court), reflect that none of the


parties were present in chambers when the district court resolved respondents' motion.

Thus, given the foregoing, we conclude that Holmes failed to demonstrate that the district court erred in granting respondents' motion for summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing a district court summary judgment de novo). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

³Given our disposition of this appeal, we need not consider Holmes' arguments regarding the district court's decision to deny her request for a temporary restraining order or preliminary injunction. And having reviewed Holmes' remaining arguments, we discern no basis for relief.

cc: Hon. Michael Villani, District Judge
Sharon Holmes
Akerman LLP/Las Vegas
Aldridge Pite, LLP
Eighth District Court Clerk