

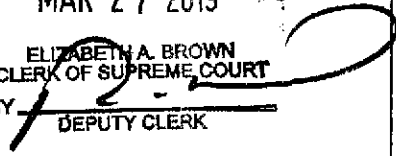
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAFAYETTE DEAN BROOKS, A/K/A
DEAN BROOKS,
Appellant,
vs.
U.S. BANK TRUST, N.A., AS TRUSTEE
FOR LSF9 MASTER PARTICIPATION
TRUST,
Respondent.

No. 76574-COA

FILED

MAR 27 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lafayette Dean Brooks appeals from a district court order dismissing his counterclaims and granting respondent summary judgment in a real property and torts action. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Brooks resided in a home that was sold at a foreclosure sale to respondent U.S. Bank Trust, N.A., as trustee for LSF9 Master Participation Trust (U.S. Bank). U.S. Bank later commenced the underlying proceeding, alleging, as relevant here, that after the foreclosure sale, Brooks recorded a document that included false representations concerning the property and thereby clouded the title thereto. Based on that allegation, U.S. Bank asserted claims for quiet title, declaratory relief, slander of title, and violation of NRS 205.395, which prohibits false representations concerning title to real property. Brooks responded by filing various pro se documents in which he presented allegations concerning, among other things, the validity of the foreclosure sale and the mortgage on which it was based.

U.S. Bank moved for summary judgment on its claims and further argued that, insofar as Brooks asserted counterclaims, they should be dismissed for failure to state a claim. Brooks, with the assistance of newly obtained counsel, opposed that motion and argued that the district court should grant him leave to amend his counterclaims. But the district court agreed with U.S. Bank, granted its motion, and denied Brooks' request to amend his counterclaims as futile. This appeal followed.

On appeal, Brooks argues that the district court failed to consider whether there was a conspiracy to violate his rights. But the district court did not address the purported conspiracy because it did not interpret Brooks' filings as presenting a conspiracy claim, and Brooks does not challenge the court's interpretation of these documents. *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). Similarly, because Brooks does not challenge any of the bases on which the district court denied his counterclaims for violation of the Truth in Lending Act and Fair Debt Collection Practices Act, his assertions regarding U.S. Bank engaging in predatory lending practices fail. *See id.*

Brooks also contends that the district court failed to address who owned the subject property. But Brooks' contention is belied by the order granting U.S. Bank's motion, which expressly found that U.S. Bank acquired the property through a foreclosure sale. And while Brooks challenges the validity of the sale, his arguments generally are not cogent and do not provide a basis for relief since he did not have an interest in the property and did timely challenge the foreclosure sale. *See* NRS 107.080(5) (requiring the district court to void a defective foreclosure sale if "an action is commenced . . . within 30 days after the date on which the trustee's deed

upon sale is recorded”); see *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument).

Nevertheless, Brooks challenges the district court’s decision on various procedural grounds. For example, Brooks asserts that he was not permitted to conduct discovery or cross-examine representatives from U.S. Bank. But insofar as U.S. Bank sought dismissal under NRCP 12(b)(5)¹, those procedures were not required since its motion challenged the sufficiency of the allegations supporting Brook’s counterclaims. See *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (explaining that, in evaluating an NRCP 12(b)(5) motion, the court must determine whether “the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief”). Moreover, although Brooks could have sought discovery or an evidentiary hearing in opposing summary judgment, see, e.g., NRCP 56(f) (authorizing the district court to deny or continue a motion for summary judgment to permit discovery to proceed), he did not do so. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). And despite Brooks’ contrary contentions, the record reflects that he received notice and an opportunity to be heard. See *Callie v. Bowling*, 123 Nev. 181,

¹In December 2018, the supreme court amended the Nevada Rules of Civil 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 the amendments do not affect this appeal’s disposition, as they became effective after the district court granted U.S. Bank’s motion.

183, 160 P.3d 878, 879 (2007) (recognizing that procedural due process requires meaningful notice and an opportunity to be heard).

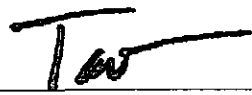
Brooks further argues that the district court was biased, that it did not support its order with sufficient findings of fact and conclusions of law, and that the attorney who briefly represented him below did not provide effective assistance. But nothing in the record indicates that the district court was biased. Moreover, a review of the order granting U.S. Bank's motion shows that the court made findings of fact and conclusions of law insofar as it was required to do so. See NRCP 56(c) (requiring a summary judgment order to state the undisputed material facts and legal conclusions on which the district court relied); see also NRCP 41 (omitting any such requirement for dismissal orders); NRCP 52(a) (providing that findings of fact and conclusions of law generally are not required in orders granting NRCP 12 motions). And ineffective assistance of counsel generally does not provide a basis for relief in civil cases. See *Nelson v. Boeing Co.*, 446 F.3d 1118, 1119 (10th Cir. 2006) (explaining that the right to effective assistance of counsel generally does not exist in civil cases and that a legal malpractice claim provides the proper means of remedying counsel's deficient performance).


Lastly, insofar as Brooks seeks relief based on U.S. Bank's failure to respond to certain documents that he recorded, relief is unwarranted since no Nevada legal authority required U.S. Bank to respond to those documents. Given the foregoing, Brooks failed to demonstrate that the district court erred by granting U.S. Bank's motion. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing a district court's NRCP 12(b)(5) dismissal order de novo); see also *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.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
Lafayette Dean Brooks
Ballard Spahr LLP/Las Vegas
Nye County Clerk

²Insofar as Brooks' arguments are not specifically addressed herein, we have reviewed them and conclude that they do not warrant relief.