

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALDINE TRICE,  
Appellant,  
vs.  
JAMES HUYNH,  
Respondent.

No. 75703-COA

**FILED**

JUN 24 2019

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

*ORDER OF AFFIRMANCE*

Geraldine Trice appeals from a district court order dismissing an unlawful detainer and torts action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Trice resided in a home that was sold at a trustee's sale. Respondent James Huynh purchased the home at the trustee's sale and brought the underlying unlawful detainer action in Las Vegas Justice Court, seeking temporary and permanent writs of restitution. Trice defended against the unlawful detainer action and further asserted counterclaims for abuse of process and malicious prosecution. But the justice court determined that Huynh set forth a prima facie case of unlawful detainer and entered a temporary writ of restitution.

Huynh later sold the property to a third-party and sought dismissal of his unlawful detainer claim and Trice's counterclaims, which she timely opposed. But in reviewing Trice's opposition, the justice court found that Trice sought damages in excess of the maximum for its

jurisdiction, and, as a result, the court directed that the matter be transferred to the district court as mandated by NRS 66.070, which requires the justice court to transfer matters in excess of its jurisdiction to the district court. Huynh then filed a version of his motion to dismiss before the district court that was nearly identical to the version that he filed before the justice court. When Trice failed to file an opposition within EDCR 2.20(e)'s timeframe for opposing motions, Huynh noticed her nonopposition, and at the subsequent hearing on the matter, the district court orally granted his motion as unopposed. *See* EDCR 2.20(e) (authorizing the district court to construe a party's failure to oppose a motion as a consent to granting the same).

Twenty-nine days after the deadline for opposing Huynh's district court motion to dismiss and thirteen days after the hearing on the matter, Trice filed an opposition to the motion that was nearly identical to the version she filed before the justice court. But without addressing that opposition, the district court subsequently memorialized its oral ruling in a written order. This appeal followed.

On appeal, Trice only challenges the district court's decision to grant Huynh's motion as unopposed insofar as she asserts that she did not receive his district court motion to dismiss and that she filed an opposition, which the district court ignored. Initially, Trice's argument that she did not receive Huynh's district court motion to dismiss is unavailing, as that document was accompanied by a certificate of service, which indicated that

it was mailed to Trice on the same day it was filed, and Trice did not adduce any evidence to demonstrate that she did not receive the motion or otherwise assert that it was sent to the incorrect address. *See* NRCP 5(b)(2)(C) (providing that service of a document is complete upon the mailing of a copy of the document to the appropriate party's last known address).

As to Trice's opposition, the context of the assertion presented in her opening brief suggests that she is challenging the district court's failure to consider the opposition that she filed before that court. But when the district court held the hearing on the motion to dismiss that Huynh filed before it, there was no opposition for the court to consider, as Trice had yet to file one. And although Trice subsequently filed an opposition before the district court, the opposition was untimely, and the court's failure to consider it therefore does not provide a basis for reversal. *See* EDCR 2.20(e).

We recognize that Trice also filed a timely opposition in the justice court. In his answering brief, Huynh addressed both Trice's district court opposition and her justice court opposition, asserting that the justice court opposition was not pending for the district court's consideration when the matter was transferred to that court. And although Trice filed a reply brief, she did not address Huynh's argument in this regard and thereby waived any challenge thereto. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to

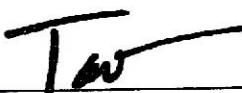


address the argument in a reply brief, “such lack of challenge cannot be regarded as unwitting and in our view constitutes a clear concession by appellants that there is merit in respondents’ position”).

Thus, given the foregoing, we are constrained to conclude that Trice failed to show that the district court abused its discretion in granting Huynh’s motion to dismiss as unopposed. See EDCR 2.20(e) (affording the district court discretion to grant a party’s motion based on the nonmoving party’s failure to file an opposition); *King v. Carlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162-63 (2005) (recognizing the district court’s discretion under the DCR analog to EDCR 2.20(e) to grant motions that are not properly opposed). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>Given our disposition of this appeal, we need not address the parties’ remaining arguments.

cc: Hon. Michael Villani, District Judge  
Geraldine Trice  
Ryan Alexander, Chtd.  
Eighth District Court Clerk