

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EUGENE E. HOOVER; AND JOELENE
M. HOOVER,
Appellants,

vs.

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE HOLDERS OF
THE CERTIFICATES, FIRST HORIZON
MORTGAGE PASS-THROUGH
CERTIFICATES SERIES FHAMS 2006-
FA3, BY FIRST HORIZON HOME
LOAN, A DIVISION OF FIRST
TENNESSEE BANK NATIONAL
ASSOCIATION MASTER SERVICER,
IN ITS CAPACITY AS AGENT FOR
THE TRUSTEE UNDER POOLING
AND SERVICE AGREEMENT;
NATIONSTAR MORTGAGE, LLC; AND
QUALITY LOAN SERVICE
CORPORATION,
Respondents.

No. 68820

FILED

DEC 28 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint in a contracts action. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Respondents filed a motion to dismiss¹ appellants' complaint, which alleged a breach of a modification agreement that was allegedly reached in a Nevada Foreclosure Mediation Program mediation as well as statutory violations in regard to the denial of a modification of that contract. In its order granting that motion, the district court first stated that dismissal appeared appropriate on the merits of respondents' dismissal motion. The district court then concluded that dismissal was also appropriate under WDCR 12(1) (requiring all motions to be accompanied by points and authorities) as neither appellants' opposition to the motion to dismiss, nor their reply in support of their motion for a preliminary injunction,² which they incorporated by reference into their

¹Respondent Quality Loan Service Corporation filed a substantive joinder to the remaining respondents' motion to dismiss. For the purposes of this order, we will refer to these motions as a single motion to dismiss because the district court treated them as such.

²Because the reply in support of their motion for a preliminary injunction was not included in the record on appeal, we presume that document supports the district court's conclusion that it lacked points and authorities supporting the opposition to the motion to dismiss. See *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (providing that when appellant fails to include pertinent documentation in the appellate record, the appellate court presumes the missing documentation supports the district court's conclusions).

opposition, included “applicable Nevada law (or any other legal authority) indicating why [respondents’] arguments lack[ed] merit.”³

In their opening brief, appellants assert that dismissal was inappropriate because they alleged sufficient facts in their complaint demonstrating a breach of contract and statutory violations. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing NRCP 12(b)(5) dismissal orders de novo and providing that, in deciding motions to dismiss, all facts alleged in a complaint are presumed true and all inferences are drawn in its favor). Respondents oppose these arguments, but also argue that this court can affirm based on the district court’s alternative conclusion that dismissal was appropriate under WDCR 12(1) as appellants failed to provide points and authorities in opposition to respondents’ dismissal motion below. Appellants do not respond to this argument in their reply brief.


Because appellants do not address the district court’s alternative conclusion that dismissal was appropriate due to their failure to provide points and authorities in opposition to respondents’ dismissal arguments, much less argue that this alternative conclusion was an abuse of discretion, they have 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) (providing that issues not raised on appeal are deemed waived); *see also*


³The district court noted that the only authority provided related to the standard of review for motions to dismiss and a single case regarding due process rights.

Esworthy v. Williams, 100 Nev. 212, 213, 678 P.2d 1149, 1150 (1984) (reviewing a dismissal for failure to follow court rules under an abuse of discretion standard). Accordingly, we affirm the district court's dismissal of appellants' complaint on that basis.

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴Based on the decision herein, we need not address whether dismissal was appropriate based on the merits of the dismissal motion. And, even if we were to address that issue, many of appellants' arguments on this point are not properly before us as they were not raised in the district court. See *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 172, 252 P.3d 676, 679 (2011) (providing that arguments not raised in district court will not be considered on appeal and that the purpose of this rule "is to allow the lower tribunal the first opportunity to decide the issue").

cc: Second Judicial District Court Dept. 8
Chief Judge, Second Judicial District Court
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