

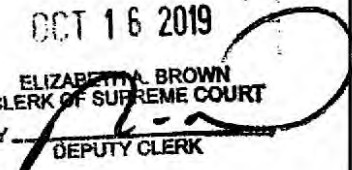
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOMINIC ANTHONY MARROCCO,
Appellant,
vs.
MARK A. HILL; AND MARCELLOUS
MCZEAL,
Respondents.

No. 76707-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Dominic Anthony Marrocco appeals from a post-judgment district court order entering judgment on a pretrial attorney fees sanction and awarding costs. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Following the entry of the final judgment in the underlying case, respondents sought to have judgment entered on certain pretrial discovery sanctions. Several days later, Marrocco's trial counsel filed a notice of withdrawal pursuant to SCR 46 and, that same day, respondents filed their verified memorandum of costs. More than one month later, with no responses to respondents' requests for relief having been filed, the district court entered an order granting the requests and entering judgment for respondents in the amount of \$7,807.95. This appeal followed.

On appeal, the primary focus of Marrocco's arguments is that the withdrawal of his trial counsel was improper. In his opening brief, he asserts that his former counsel "fail[ed] to defend the costs and sanction motions which invited error" and that counsel "had an obligation to make some effort to avoid the costs and sanctions." In light of these assertions,

Marrocco argues that the challenged order should be reversed on ineffective assistance of counsel grounds.

But as respondents point out, there is generally no right to the effective assistance of counsel in civil cases. *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) (“[W]e find no support . . . for the proposition that the right to an ineffective-assistance-of-counsel argument exists in civil cases.”); *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (noting “the presumption that, unless [an] indigent litigant may lose his physical liberty if he loses the litigation, there is generally no right to counsel in a civil case”). Under these circumstances, and because there is no allegation or indication that Marrocco is an indigent litigant in danger of losing his physical liberty, this argument is without merit.


While Marrocco sets forth additional arguments as to why the withdrawal of his counsel under the circumstances presented here was improper and warrants reversal of the challenged order in his reply brief, we do not consider those arguments as they are not properly before us on appeal. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (declining to consider arguments that were not cogently argued in the opening brief and were instead raised for the first time in the appellant’s reply brief).

Having concluded that the withdrawal of Marrocco’s counsel does not provide a basis for reversal, to the extent he presents arguments regarding the propriety of the costs award on appeal, those arguments are not properly before us. Notably, Marrocco did not respond to the request for costs below and thus, any arguments regarding the award of costs to

respondents are waived and cannot be considered on appeal.¹ *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, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”). Accordingly, we affirm the district court’s order.²

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. Timothy C. Williams, District Judge
Wolfe Thompson
Nersesian & Sankiewicz
Eighth District Court Clerk

¹Aside from his withdrawal-based arguments, Marrocco offers no other assertions that the entry of judgment on the attorney fees awarded as sanctions was improper. And even if such arguments had been presented they would not be properly before us given that they were not raised below. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983.

²We deny respondents’ request, set forth in their answering brief, that sanctions be imposed on appellant.

³The Honorable Bonnie Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.