

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES R. WADSWORTH,  
Appellant,  
vs.  
MICHAEL OCHS,  
Respondent.

No. 80854-COA

**FILED**

**MAR 30 2021**

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

*ORDER OF AFFIRMANCE*

James R. Wadsworth appeals from a district court order granting summary judgment in a tort and contract action. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

In the instant case, Wadsworth was a member of a private Facebook page entitled "Fernley Rant and Rave" (Rant and Rave). The members of this Facebook page consist of residents of Fernley, Nevada, who post reviews and opine on local businesses and events. Importantly, the administrators of Rant and Rave require group members to indicate whether the post is a rant or a rave at the top of their post. Posts that do not indicate rant or rave are subject to deletion at the administrators' discretion.

As relevant here, Wadsworth posted a rant on the Rant and Rave page about a local business, Purcell Tire, alleging that Purcell's employees failed to tighten the lug nuts on his tires after servicing his vehicle. Within the post, Wadsworth purportedly asked other members of Rant and Rave to come forward with their grievances against Purcell for

the purposes of forming a class action. The post allegedly received over 100 comments from other individuals who had similar “unsatisfactory service” at Purcell. However, Wadsworth did not indicate whether this post was a rant or a rave, and respondent Michael Ochs, an administrator of Rant and Rave, deleted the post.

After multiple communications with Ochs wherein Wadsworth attempted to get him to return the deleted post and associated comments, Wadsworth filed a complaint and then an amended complaint against Ochs alleging causes of action for breach of contract, civil conspiracy, and conversion. In particular, Wadsworth alleged that (1) the parties entered into a “joint contract” by accepting Facebook’s terms of service, and Ochs breached that contract when he deleted Wadsworth’s post and the accompanying comments; (2) Ochs converted Wadsworth’s personal property when he deleted the post; and (3) Ochs conspired with the manager of Purcell Tire to delete Wadsworth’s post.

Ochs later filed a motion for summary judgment, which Wadsworth opposed. He also filed a motion for NRCP 11 sanctions, alleging that Wadsworth’s complaint was frivolous, unsupported by evidence, intended to harass Ochs and warranted sanctions. Wadsworth opposed Ochs’ motion for sanctions, and filed his own motion for NRCP 11 sanctions against Ochs’ former counsel, Matthew K. Merrill, who had withdrawn from the case several months earlier.

The district court later held a hearing on the above motions, where it heard argument from the parties. Following the hearing, the district court entered a written order that granted Ochs’ motion for summary judgment, denied Wadsworth’s motion for NRCP 11 sanctions

against Ochs' former counsel, and instructed Ochs' new counsel to file a separate motion for the attorney fees and costs he sought under NRCP 11. After considering the motion for fees and costs, and Wadsworth's opposition thereto, the district court awarded Ochs a total of \$2,843.75 in attorney fees and costs under NRCP 11. Wadsworth now appeals.

In his informal brief, Wadsworth challenges the district court's orders (1) granting Ochs' motion for summary judgment; (2) denying his motion for NRCP 11 sanctions against Ochs' former attorney; and (3) awarding Ochs attorney fees and costs under NRCP 11.

With respect to the first issue, Wadsworth contends that the district court erred in granting summary judgment on his breach of contract claim, and refers this court to his opposition below to provide evidence and argument for this proposition. But Wadsworth's effort to address the grant of summary judgment on this claim in this fashion is improper, as it substitutes a reference to Wadsworth's district court opposition in place of making actual arguments on the merits in his appellate brief. See NRAP 28(e)(2) ("Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal."). And because this reference to his opposition was Wadsworth's sole effort to address the grant of summary judgment on his breach of contract claim, we decline to consider this issue as Wadsworth has failed to present cogent argument on this point on appeal. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). Wadsworth likewise failed to present any argument on appeal

regarding the grant of summary judgment on his conversion and civil conspiracy claims, and thus he has waived any argument as to these issues. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”). We therefore affirm the grant of summary judgment on Wadsworth’s claims.

Wadsworth’s challenge to the denial of his NRCP 11 motion fails for similar reasons, as Wadsworth does not develop any cogent argument as to why he believes this ruling was improper.<sup>1</sup> Thus, we need not consider his challenge to the denial of this motion, and we therefore affirm that decision. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

Finally, turning to the district court’s award of attorney fees and costs to Ochs, we conclude that Wadsworth’s challenge to this decision is not properly before us on appeal. While Wadsworth addresses issues related to this post-judgment decision in his appellate briefing, he did not file a notice of appeal from that order. The notice of appeal that he filed identifies only the order awarding summary judgment in favor of Ochs, which also denied his own motion for NRCP 11 sanctions. Orders awarding attorney fees and costs are independently appealable as special orders after final judgment and must be separately appealed from. *See* NRAP 3(c)(1)(B);

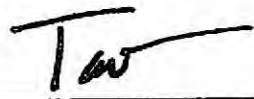
---

<sup>1</sup>To the extent that Wadsworth attempts to incorporate his motion for sanctions into his informal brief, this argument is likewise improper under NRAP 28(e).

NRAP 3A(b)(8); NRAP 4; *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). Therefore, we do not address Wadsworth's arguments as to the post-judgment award of attorney fees and costs to Ochs on appeal.

Accordingly, and for the reasons set forth above, we ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. John Schlegelmilch, District Judge  
James R. Wadsworth  
Michael Ochs  
Third District Court Clerk

---

<sup>2</sup>Insofar the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.