IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLENE ROGOFF,
Appellant,
vs.
ROCKVIEW DAIRIES, INC.,
Respondent.

No. 83035-COA

ORDER OF AFFIRMANCE

Marlene Rogoff appeals from a final judgment following a short trial in a contract and tort action. Eighth Judicial District Court, Clark County; David M. Jones, Judge.[1]

Rogoff initiated the underlying action against respondent Rockview Dairies, Inc., asserting claims for breach of contract and intentional interference with prospective business relations. In relevant part, Rogoff alleged that Rockview directly negotiated the purchase of an appropriation of water in the amount of 50 acre-feet annually (afa) from nonparty James Marsh. She alleged that this required Rockview to pay her a penalty under a contract wherein Rockview had promised to "go[ ] through [her]" in purchasing such water rights for a specified period of time. Rogoff

[1]Judge Jones entered the final judgment from which Rogoff appeals, but former Eighth Judicial District Court Judge Rob Bare entered the interlocutory order granting summary judgment against Rogoff on her claims against respondent, which she likewise challenges in this appeal. *See Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (recognizing that interlocutory orders are reviewable on appeal from the final judgment).

further alleged that, after she and Rockview executed a mutual release and settlement agreement in connection with that dispute, Rockview proceeded to violate the original agreement again by directly purchasing another 129 afa from Marsh, thereby causing Rogoff to incur further damages.

Rockview filed an answer and counterclaim, in which it alleged that Rogoff filed her complaint knowing the allegations therein were false and with the intention of extorting Rockview, thereby committing abuse of process. The case was subsequently transferred to the court-annexed arbitration program, and Rockview filed a motion for summary judgment on Rogoff's claims against it. Rockview argued that sales of water rights must be effectuated by deed and recorded with the county recorder under NRS 533.382, and because no recorded deed exists in connection with any sale from Marsh to Rockview other than the original sale of 50 afa, no additional sale occurred. In opposition, Rogoff argued that the absence of a deed was irrelevant, as her contract with Rockview defined the event of a breach giving rise to the penalty as the "signing [of] any agreement to purchase [water rights] . . . or [the] time of purchase, whichever comes first." She further argued that she had provided the court sufficient evidence to demonstrate a genuine dispute of material fact as to whether Rockview had purchased at least an additional 89.5 afa from Marsh in violation of the contract.

The district court ultimately granted Rockview's motion for summary judgment, concluding that the absence of a recorded deed evidencing the transaction upon which Rogoff based her claims was "conclusive proof that a valid sale did not occur." It further concluded that Rogoff's proffered evidence in connection with the supposed sale of 89.5 afa

was simply a single-party application by Rockview to change the point of diversion, manner of use, or place of use for an allocation of water it already owned and was therefore not indicative of an additional purchase from Marsh. Accordingly, the district court concluded that Rogoff could not recover from Rockview on any of her claims.

The matter proceeded to arbitration and ultimately a short trial on Rockview's counterclaim for abuse of process, and the short-trial judge granted Rockview's motion in limine to preclude Rogoff from rearguing the merits of her claims in light of the district court's order granting summary judgment in favor of Rockview. Following the short trial, the jury returned a verdict in favor of Rockview on its counterclaim, and the district court entered judgment on the verdict in the amount of $50,000, in addition to attorney fees, costs, and prejudgment interest, for a total judgment of $58,733.67. This appeal followed.

On appeal, Rogoff primarily challenges the district court's order granting summary judgment on her claims in favor of Rockview. She repeats the arguments she made below, and she contends that this court must reverse the judgment in favor of Rockview on its counterclaim if it reverses the earlier summary judgment.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations

and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

At the outset, we agree with Rogoff that the district court erred in determining that the absence of a recorded deed evidencing any additional sale of water rights required the court to conclusively presume that no such sale occurred. Nothing in NRS 533.382 or NRS 533.383—the primary statutes concerning the recording of conveyances of water rights—provides for such a presumption. Instead, they simply establish that conveyances of water rights must be accomplished by deed, that such a deed must be recorded, and that an unrecorded deed shall be deemed void as against a bona fide purchaser. *See* NRS 533.382, .383(2). And as Rogoff correctly points out, her contract with Rockview specifically defined the moment of breach as the signing of a contract to purchase water rights, which generally precedes the actual conveyance of such rights by deed.

However, because the district court's error on this point was ultimately harmless, Rogoff fails to demonstrate that reversal is warranted. *See Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) ("To be reversible, an error must be prejudicial and not harmless."); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). As the district court correctly concluded, Rogoff's proffered evidence with her opposition to Rockview's motion for summary judgment—the application by Rockview under NRS 533.345 to change the point of diversion, manner of use, or place of use of a previously allocated 89.5 afa and the permit granting that application—did not indicate that Rockview had purchased those rights

from Marsh.[2] Accordingly, Rogoff failed to provide any evidence in support of the notion that any transaction other than the original sale of 50 afa occurred between Rockview and Marsh during the time covered by her contract with Rockview, and the district court appropriately granted summary judgment on Rogoff's claims in favor of Rockview. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (explaining the moving and opposing parties' respective burdens of production and persuasion on summary judgment).

Finally, because Rogoff's challenge to the final judgment against her on Rockview's counterclaim for abuse of process derives from her belief that the district court incorrectly granted summary judgment

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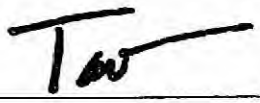
[2]Days after Rockview filed its reply in support of its motion for summary judgment, Rogoff filed a second amended opposition to the motion, to which she attached additional documents not previously provided to the district court. One of those documents—the only one potentially tying the 89.5 afa to Marsh—was a purported 2011 letter from Rogoff to Marsh in which she informed him that she had "given [Rockview] the points of diversion of water rights owned by [him]" for eight different allocations of water, including one in the amount of 89.5 afa. The district court did not address this document in its order granting Rockview's motion, and given the untimeliness of Rogoff's submission, *see* EDCR 2.20(e) (requiring the opposing party to serve an opposition within 14 days after service of the motion), and the lack of any argument below or on appeal as to why she could not have timely submitted that document, we discern no abuse of discretion in the district court's apparent decision to disregard it. *See Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 277-78, 182 P.3d 764, 768 (2008) (reviewing a district court's decision whether to consider an untimely opposition for an abuse of discretion).

against her on her own claims, she fails to demonstrate that reversal of that decision is warranted.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Gibbons



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[3]To the extent Rogoff contends the short-trial judge's decision to grant Rockview's motion in limine based on the earlier summary judgment prevented her from presenting any facts or evidence whatsoever to defend against Rockview's abuse-of-process claim, we are unable to fully evaluate this issue, as we have no record of the proceedings from the short trial. Although there is no formal reporting of short trials unless paid for by the parties, NSTR 20, it is an appellant's burden to provide the "portions of the record essential to determination of issues raised in appellant's appeal." NRAP 30(b)(3). Moreover, where, as was apparently the case here, the proceedings were not reported or recorded, "the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the respondent, who may serve objections or proposed amendments within 14 days after being served." NRAP 9(d). Here, Rogoff failed to utilize this option, resulting in a deficient record on appeal and the necessary presumption that the missing portion of the record supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

[4]Insofar as Rogoff raises 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.

cc: Hon. David M. Jones, District Judge
Marlene Rogoff
The Galliher Law Firm
Eighth District Court Clerk