

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF GUARDIANSHIP
OF LUCY GRANATA, A PROPOSED
PROTECTED PERSON.

No. 82961-COA

FILED

JAN 19 2023

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

DAWN GRANATA,
Appellant,
vs.
JOHN GRANATA,
Respondent.

ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART

Dawn Granata appeals from a district court order confirming the sale of real property in an adult guardianship matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

This appeal concerns a district court order confirming the sale of a single-family home owned by Lucille "Lucy" Granata, an adult protected person. As relevant here, Lucy executed a deed upon death naming her daughter, Dawn, as beneficiary of the home. Later, over Dawn's objection, the district court appointed Lucy's son (Dawn's brother), respondent John Granata, as the permanent guardian over Lucy's person and estate.

Shortly after obtaining his permanent letters of guardianship, John, without notice to interested parties, or the district court, recorded a new deed for the home, which revoked the deed upon death, but maintained Lucy's ownership interest in the property. He also filed a petition to confirm

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the sale of the home.¹ Dawn opposed the petition, asserting that John acted improperly by revoking the deed upon death without obtaining prior court approval under NRS 159.078, that she should have had an opportunity to contest the revocation and preserve her beneficiary status, and that, upon information and belief, Lucy had other assets that should be exhausted for her care, maintenance, and support before any sale of the home is contemplated.

After a hearing on the matter, the district court entered an order finding that John was not required to obtain prior court approval to sell the home under NRS 159.078 as the home was “the only liquid asset available” to provide for Lucy’s care and future expenses. The court further found that, under NRS Chapter 111—which establishes the effect of a deed upon death during the grantor’s lifetime—Dawn had no interest or rights in the property while Lucy was still living. Because John (acting in his capacity as Lucy’s guardian) revoked the deed upon death while Lucy was still living, the court found that Dawn had no legal interest in the real property. Further, the district court found John’s testimony credible that the sale of the house was required to provide for Lucy’s care and cover expenses. In light of these findings, the district court allowed the sale of the home to proceed over Dawn’s objection, and in a subsequent order, confirmed the sale of the home to a third party. Dawn now appeals.

In her opening brief, Dawn summarily argues that the district court abused its discretion when it confirmed the sale of the home without

¹Lucy passed away after revocation of the deed but before the hearing on John’s petition.

first requiring John to file a successful petition under NRS 159.078, which requires the guardian to petition the district court before “mak[ing] or chang[ing] the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the protected person which includes the designation of a beneficiary.” Because John failed to file such a petition, Dawn asks this court to reverse the order confirming the sale of the home and to “rescind” the sale of the property.²

However, as noted above, the record before us reveals that the real property in question has been sold to a third party, seemingly rendering Dawn’s efforts to rescind the sale of the property moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (stating that “even though a case may present a live controversy at its beginning, subsequent events may render the case moot”).

On September 26, 2022, this court issued an order to show cause that directed Dawn to demonstrate why this court should not dismiss this portion of the appeal. Where, as here, the case involves a matter of real property, an appellant’s failure to seek a stay and the subsequent sale of the property prevents an appellate court from granting any effective relief and will render the appeal moot. *See In re Mann*, 907 F.2d 923, 926 (9th

²Dawn also appears to summarily challenge John’s petition under NRS 159.113(3) (setting forth requirements for a guardian’s petition to sell a protected person’s real property, among other things). However, Dawn failed to raise this challenge below, and therefore we will not consider it on appeal. *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.”)

Cir. 1990) (stating that a debtor's failure to obtain a stay in a foreclosure action "normally renders the appeal moot"); *Lathrop v. Sakatani*, 141 P.3d 480, 486 (Haw. 2006) (stating that "it is appellant's burden to seek a stay if post-appeal transactions could render the appeal moot" and that "the sale of the property prevents the appellate court from granting any effective relief" (internal citations omitted)); *see also Weddell v. H2O, Inc.*, 128 Nev. 94, 106 n.10, 271 P.3d 743, 751 n.10 (2012) (stating that the subsequent sale of real property would render issues related to a lis pendens on the property moot and citing to *Lathrop* with approval).

Here, Dawn failed to point to anything in the record on appeal or argue in her response to this court's order to show cause that she sought a stay of the sale of the real property, and, as noted above, the record before us on appeal indicates that the real property at issue has been sold to a third party. Because this court is unable to grant effective relief related to Dawn's request to rescind the sale of the property, we therefore dismiss as moot the portion of Dawn's appeal challenging the order directing the sale of the property.³ *See Bristol*, 126 Nev. at 602, 245 P.3d at 574; *Lathrop*, 141 P.3d at 486.

Although Dawn's appeal is moot as to the sale of the real property, Dawn's remaining challenges to the district court's interlocutory

³In her response, Dawn argues that this portion of the appeal is not rendered moot by the sale of the real property at issue here because she may be entitled to the balance of the proceeds of the sale. However, Dawn failed to support this argument with relevant authority, and we therefore decline to consider it. *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 or lack relevant authority).

order granting John's petition to sell the home over Dawn's objection present an actual controversy to the extent that she may be able to pursue the proceeds of the sale or damages if her appeal is meritorious. But to the extent that Dawn challenges the district court's interlocutory order which found that the guardian was not required to petition the court for prior approval before revoking the deed upon death, Dawn fails to make a cogent argument in support of that challenge. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Notably, Dawn's opening brief contained just two pages of legal argument, which only summarily discussed the issues asserted on appeal, *see* NRAP 28(a)(10) (stating the requirements for appellant's argument section), and Dawn's appendix did not contain all documents relevant to the resolution of this appeal, *see* NRAP 30(b)(3) (providing that an appellant's appendix must include "portions of the record essential to determination of issues raised" on appeal).⁴

And we need not reach the merits of Dawn's remaining challenges to the district court's interlocutory decision because Dawn has failed to address the district court's alternative grounds for that ruling, namely its determination that, under NRS Chapter 111, the deed upon death "conveyed no interest to Dawn Granata in the real property owned by the Protected Person." *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50,

⁴In particular, Dawn failed to include John's reply to her opposition to the sale of the real property, or John's affidavit, which we presume supports the district court's decision here. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (observing that "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision").

513 P.3d 1285, 1288 (Ct. App. 2022) (stating that “the failure to properly challenge each of the district court’s independent alternative grounds leaves them unchallenged and therefore intact, which results in a waiver of any assignment of error as to any of the independent alternative grounds”). Accordingly, we affirm the order of the district court denying Dawn’s objection to the guardian’s petition to confirm the sale of the property.⁵

It is so ORDERED.⁶


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. James Todd Russell, District Judge
Melissa Mangiaracina, Settlement Judge
The Kidder Law Group, Ltd.
Rowe & Hales, LLP
Carson City Clerk

⁵This court takes no position as to whether Dawn has any other available means for relief in law or in equity.

⁶Insofar as 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.