

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBIN HUHN,
Appellant,
vs.
THOMAS LUCERO; AND DONNA L.
LUCERO, HUSBAND AND WIFE,
Respondents.

No. 70303

FILED

MAY 24 2017

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

*ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING*

Robin Huhn appeals from a final judgment in a contract action. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Respondents Thomas Lucero and Donna Lucero (collectively "the Luceros") borrowed \$5,300 via a promissory note that was executed on October 10, 2007, and matured on November 1, 2009. The note required the Luceros to make monthly payments and pay its remaining balance on November 1, 2009. At some point after the date of maturity, the note was assigned to Huhn. On November 10, 2014, Huhn filed the instant action against the Luceros, seeking (among other things) to recover under the note.

During the proceedings below, the district court adopted a discovery commissioner's report and recommendations that suggested: (1) requiring the Luceros to pay certain attorney fees and costs; and (2) if the Luceros failed to pay that monetary sanction and/or attend their rescheduled depositions, their answer should be stricken.¹ Shortly

¹We do not address whether the district court actually struck the answer because the parties do not raise that issue on appeal.

thereafter, the clerk entered a default against the Luceros, and Huhn then applied for a default judgment. After holding a hearing, the district court issued an order: (1) setting aside the discovery sanctions and the entry of default; (2) concluding that Huhn's claim under the note was time-barred pursuant to NRS 11.190; and (3) awarding Huhn "equitable" relief of \$4,400 in principal, along with interest accrued up to May 1, 2014.²

On appeal, Huhn contends that the district court erred by summarily ruling on the merits of her breach of contract claim. We agree.³

By dismissing Huhn's claim under the note as time-barred, the district court (in effect) sua sponte entered summary judgment against

²We do not recount the facts except as necessary to our disposition.

³Huhn also asserts that the district court abused its discretion by setting aside the discovery sanctions and the default. See *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010) ("This court generally reviews a district court's imposition of a discovery sanction for abuse of discretion."); *Sealed Unit Parts Co., Inc. v. Alpha Gamma Chapter of Gamma Phi Beta Sorority Inc. of Reno*, 99 Nev. 641, 643, 668 P.2d 288, 289 (1983) ("A lower court's decision in response to a motion to set aside an entry of default will not be disturbed in the absence of an abuse of discretion."), *overruled in part on another ground by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997). We decline to address Huhn's contentions because she fails to support them with relevant authorities, cogent arguments, and/or citations to the record. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that an appellate court need not consider claims that are not cogently argued and supported with relevant authority); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) ("This court need not consider the contentions of an appellant where the appellant's opening brief fails to cite the record on appeal.").

her.⁴ Moreover, the record shows that before the district court issued its order, Huhn had notice of only her application for a default judgment and the Luceros' motion to set aside the default (the latter was not included in the record). Therefore, we conclude that the district court erred by dismissing Huhn's breach of contract claim at that procedural posture.⁵ *See Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. ___, ___, 335 P.3d 199, 202 (2014) ("[T]he defending party must be given notice and an opportunity to defend itself before a court may grant summary judgment sua sponte.").


In sum, we affirm the district court's ruling setting aside the discovery sanctions and the entry of default, and we reverse that court's decision to effectively enter summary judgment on Huhn's breach of contract claim. Accordingly, we


⁴Further, the district court arguably sua sponte entered summary judgment against the Luceros by awarding Huhn equitable relief in the same order in which it set aside the default. Nonetheless, this court need not reach that issue to resolve the instant appeal.

⁵Moreover, we note (but do not decide) that the Luceros may not have adequately pled a statute of limitations defense in accordance with NRCP 8(c). We also note (again without deciding) that the district court may have erroneously concluded that NRS 11.190(1) completely barred Huhn's breach of contract claim. *See Clayton v. Gardner*, 107 Nev. 468, 469-70 & n.1, 813 P.2d 997, 998-99 & n.1 (1991) (emphasis added) ("[W]here contract obligations are payable by installments, the limitations statute begins to run only with respect to *each installment when due*, unless the lender exercises his or her option to declare the entire note due.").

Lastly, we have carefully considered the Luceros' other arguments in favor of affirming this aspect of the district court's order and conclude that they are unpersuasive.

ORDER the judgment AFFIRMED IN PART AND
REVERSED IN PART AND REMAND this matter to the district court for
proceedings consistent with this order.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Craig A. Hoppe, Settlement Judge
Colquitt & Abbatangelo, Ltd.
Lewis Roca Rothgerber Christie LLP/Las Vegas
Eighth District Court Clerk