

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SUSAN KING,  
Appellant,  
vs.  
MORGAN STANLEY & CO., INC.;  
MORGAN STANLEY SMITH BARNEY,  
LLC; AND TIMOTHY FRANK  
MCELROY,  
Respondents.

No. 77040-COA

**FILED**

**MAR 20 2020**

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

*ORDER OF AFFIRMANCE*

Susan King appeals from district court orders granting summary judgment and awarding costs in a tort action.<sup>1</sup> Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

King filed a complaint against, as relevant here, respondents Morgan Stanley & Co., Inc., Morgan Stanley Smith Barney, LLC (collectively Morgan Stanley), and Timothy Frank McElroy, as well as Allen Spaulding arising out of the facts and circumstances surrounding Spaulding's improper taking of money from a trust set up by King. The trust money was held in an account with Morgan Stanley for which McElroy was the broker and Spaulding was trustee at the time the money was

---

<sup>1</sup>Allen Spaulding, Morgan Stanley & Co., LLC, and Morgan Stanley Capital Group, Inc. did not make appearances in the district court. As a result, they never became parties to the case, and thus, they are not proper parties to this appeal. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who is not served with process and does not make an appearance in the district court is not a party to that action). We therefore direct the clerk of the court to amend the caption of this case to conform to the caption on this order by removing Spaulding, Morgan Stanley & Co., LLC, and Morgan Stanley Capital Group, Inc. as respondents.

improperly taken from the account. King's complaint included twelve causes of action, all of which were dismissed by the district court. But the supreme court later reversed that dismissal as to King's claim for intentional infliction of emotional distress (IIED).<sup>2</sup> See *King v. Morgan Stanley & Co.*, Docket No. 63285 (Order of Reversal and Remand, May 29, 2015). After remand, respondents filed a motion for summary judgment as to the IIED claim, which was granted over King's opposition. The order concluded that King failed to establish that respondents' conduct was extreme and outrageous or intended to cause her emotional distress. King moved for reconsideration, which was denied. Respondents then moved for attorney fees and costs and the district court awarded costs to respondents, but denied the request for attorney fees. This appeal followed.

To prevail on an IIED claim, a plaintiff must demonstrate that the defendants acted with the intention of, or reckless disregard for, causing emotional distress. See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (providing that to establish a claim for IIED, a plaintiff must show: 1) extreme and outrageous conduct with the intention of, or reckless disregard for, causing emotional distress; 2) severe or extreme emotional distress; and 3) causation). On appeal, King fails to challenge the district court's conclusion that she failed to establish that respondents' conduct was intended to cause her emotional distress or otherwise argue that she has established this required intent element of her IIED claim. As a result, she has waived any such arguments. See *Powell v. Liberty Mut.*

---

<sup>2</sup>While King argues that all of her claims were reinstated after the prior appeal, the supreme court's order only reversed dismissal as to the IIED claim. See *King*, Docket No. 63285 (Order of Reversal and Remand, May 29, 2015). As a result, only the IIED claim was properly before the district court following the reversal and remand from the supreme court. Accordingly, King's assertion that the district court improperly failed to consider her additional claims on remand is without merit.

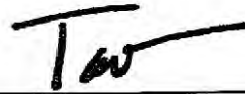
*Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived). Thus, we necessarily affirm the district court's order granting summary judgment on King's IIED claim.

Turning to the district court order granting respondents' motion for costs, although King appealed from that determination, her opening brief fails to provide any argument challenging the award. As a result, any such challenge is waived. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Accordingly, we affirm the costs award.

Based on the reasoning set forth above, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

cc: Hon. Gloria Sturman, District Judge  
Susan King  
Schiff Hardin LLP  
Eighth District Court Clerk

---

<sup>3</sup>To the extent King raises arguments that are not explicitly addressed in this order, we have considered the same and conclude that they do not present a basis for relief.