

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RH KIDS, LLC,
Appellant,
vs.
NATIONSTAR MORTGAGE, LLC,
Respondent.

No. 77915-COA

FILED

APR 17 2020

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

ORDER OF AFFIRMANCE

RH Kids, LLC (RH), appeals from a district court order granting a motion for summary judgment in a quiet title action. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

The original owners of the subject property failed to make periodic payments to their homeowners' association (HOA). The HOA recorded a notice of delinquent assessment lien and later a notice of default and election to sell to collect on the past due assessments and other fees pursuant to NRS Chapter 116. Prior to the sale, counsel for the predecessor to respondent Nationstar Mortgage, LLC (Nationstar)—holder of the first deed of trust on the property—tendered payment to the HOA foreclosure agent in an amount equal to the superpriority portion of the HOA's lien, but the agent rejected the tender and proceeded with its foreclosure sale, at which the predecessor to RH purchased the property. After acquiring the property, RH filed a complaint seeking to quiet title, and Nationstar counterclaimed seeking the same. Nationstar moved for summary judgment, which the district court initially denied but then granted on reconsideration, finding that the tender extinguished the superpriority

portion of the HOA's lien such that the property remained subject to Nationstar's deed of trust. This appeal followed.

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 issue 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 issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Here, the district court correctly found that BOA's tender extinguished the superpriority lien such that the property remains subject to BOA's deed of trust. *See Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 605, 427 P.3d 113, 116 (2018).¹ We reject RH's argument that Nationstar failed to prove that the tender covered the full superpriority amount of the lien, as RH failed to dispute that below. *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 . . . is deemed to have been waived and will not be considered on appeal."). With respect to RH's argument that Nationstar failed to prove that the tender was delivered, we note that RH failed to challenge delivery in opposition to Nationstar's motion for summary judgment, and—inexplicably—it stated in its opposition to Nationstar's

¹To the extent the district court's order appears to conclude both that the sale was void only as to the superpriority portion of the HOA's lien and that it was void in its entirety, we clarify that it was void only as to the superpriority amount, and RH took the property subject to Nationstar's deed of trust. *See Bank of Am.*, 134 Nev. at 612, 427 P.3d at 121.

motion for reconsideration both that delivery of the tender was “undisputed” and that Nationstar failed to prove the same.

To the extent RH preserved this issue, it neglects circumstantial evidence in the record reflecting that the tender was delivered and rejected, including copies of the letter and check, as well as a printout from the filing system used by counsel for Nationstar’s predecessor reflecting that the letter and check had been delivered and returned. RH fails to argue or point to any evidence demonstrating why these records were not trustworthy. *See Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 235-36, 445 P.3d 846, 850-51 (2019) (concluding the district court did not—at the summary judgment stage—abuse its discretion in relying on a similar combination of an employee declaration and accompanying printouts from a database where, as here, the declaration attested that the printouts satisfied the requirements of NRS 51.135, and the foreclosure-sale purchaser failed to demonstrate that those business records were not trustworthy). Accordingly, we reject RH’s argument on this point.

Given the foregoing, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Insofar 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.

cc: Chief Judge, Eighth Judicial District Court
Department 18, Eighth Judicial District Court
Hong & Hong
Akerman LLP/Las Vegas
Eighth District Court Clerk