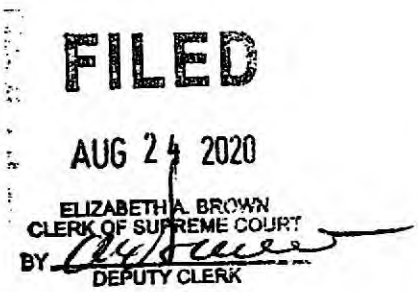
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRY KNOX, INDIVIDUALLY,
Appellant,
vs.
STILLWATER INSURANCE COMPANY; AND OCWEN LOAN SERVICING, LLC,
Respondents.

No. 76334-COA



ORDER OF AFFIRMANCE

Terry Knox appeals from a district court order dismissing her complaint. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Knox sued respondents Stillwater Insurance Company (Stillwater) and Ocwen Loan Servicing, LLC (Ocwen), asserting contract, tort, quiet title, and declaratory judgment claims. Following an unsuccessful conference with Stillwater concerning her case, Knox emailed and faxed a copy of her complaint to the company. When Stillwater subsequently failed to answer, Knox moved the district court to sanction the company by declaring it liable for her losses. Purporting to act through a special appearance, Stillwater opposed that motion and moved to quash service of process, arguing that Knox improperly delivered the complaint by

way of email and fax and that she failed to include a copy of her summons. The district court denied Knox's motion for sanctions and granted Stillwater's motion to quash service of process, reasoning that Stillwater was not properly served with the summons and complaint. Meanwhile, Ocwen, which had been served with process, moved to dismiss Knox's complaint against it, arguing that she failed to state a claim for which relief could be granted. The district court agreed and granted Ocwen's motion for the reasons stated therein. This appeal followed.

On appeal, Knox argues that the district court improperly denied her motion for sanctions and granted Stillwater's motion to quash because Stillwater was required to present its challenge to the sufficiency of service of process in an answer or pre-answer motion to dismiss, as opposed to a pre-answer motion to quash.[1] We disagree that there was impropriety in the district court's rulings on these points. Since the Nevada

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[1]On December 10, 2018, the supreme court entered an order determining that jurisdiction over this appeal was proper based on the amended notice of appeal from the "November 8, 2018, [order] dismissing [Knox's] second amended complaint and resolving the proceedings below." *See Knox v. Stillwater Ins. Co.*, Docket No. 76334 (Order Reinstating Briefing, December 10, 2018). In light of this order, and because the interlocutory order denying Knox's motion for sanctions and quashing service of process was reviewable in the context of her appeal from the November 8 order, Stillwater's challenge to this court's jurisdiction over the appeal necessarily fails.

Supreme Court abrogated the special/general appearance doctrine, defendants have been permitted to challenge the sufficiency of service of process "in an answer or pre-answer motion" with no specific requirement concerning the type of pre-answer motion that must be used to present the challenge. *See Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 656-57, 6 P.3d 982, 985-86 (2000) (abrogating the special/general appearance doctrine and discussing the proper time for asserting challenges to personal jurisdiction, process, and service of process); *see also* NRCP 12(b), (h)(1) (generally requiring a defendant to challenge the sufficiency of service of process in an answer or pre-answer motion and providing that such a challenge is waived if not so raised).[2] And here, Stillwater properly presented its challenge to the sufficiency of service of process in a pre-answer motion to quash. *See Hansen*, 116 Nev. at 657, 6 P.3d at 986 (concluding that a defendant raised a timely challenge to personal jurisdiction by presenting its challenge in a pre-answer motion to quash).

Knox attempts to overcome the foregoing by arguing that she was not required to formally serve Stillwater with process because the

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[2]The NRCP were amended effective March 1, 2019. *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). Because the events giving rise to this appeal all occurred before March 1, 2019, we cite the prior version of the NRCP herein.

company engaged in settlement negotiations with her that were sufficient in "scope, character and/or design to convey [its] intent to defend in the underlying mat[t]er." But insofar as Knox maintains that a defendant's participation in settlement negotiations is a substitute for service of process, she has not cited any supporting case law or other authority, and we therefore decline to consider this issue. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that Nevada's appellate court's need not consider arguments that are not supported with cogent argument and citations to relevant legal authority). And although the parties' participation in settlement negotiations during the period for serving process is a factor that the district court may consider when evaluating requests for an enlargement of time to serve process, Knox has never requested such relief or otherwise presented argument with respect to the other relevant factors. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 596-97, 597 n.2, 245 P.3d 1198, 1201 & n.2 (2010) (discussing the procedure for obtaining enlargements of time to serve process and setting forth a non-exhaustive list of factors that the district court may consider to determine if good cause exists for an enlargement of time); *see also Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, given the foregoing, Knox failed to establish that relief is warranted with respect to the order denying her motion for sanctions and granting Stillwater's motion to quash.

Turning to the order granting Ocwen's motion to dismiss, Knox contends that the district court erred because Ocwen waived its NRCP 12(b)(5) challenge by failing to present it in an answer before making a general appearance. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing a district court order granting an NRCP 12(b)(5) motion to dismiss de novo). But even if the special/general appearance doctrine still applied in Nevada, Knox's argument reflects a fundamental misunderstanding of the doctrine, which concerned the proper way to assert challenges to the district court's personal jurisdiction, the sufficiency of process, and the sufficiency of service of process. *See Hansen*, 116 Nev. at 653, 6 P.3d at 983 (distinguishing between special and general appearances). And regardless, NRCP 12(b) specifically provides for challenges under subsection five to be presented in pre-answer motions, which Ocwen did here. Thus, because Knox does not otherwise challenge the order dismissing her claims against Ocwen, we conclude that she failed to demonstrate that the district court's decision was erroneous.[3] *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

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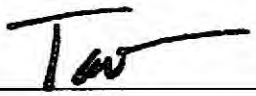
[3]Knox also challenges the district court's denial of her motion for summary judgment with respect to her claims against her homeowners' association (HOA). Although Knox's complaint named the HOA as a defendant, she did not individually list the HOA as a respondent to this

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

_____, C.J.
Gibbons



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appeal in her case appeal statement and she has not subsequently served the HOA with her filings in this matter. As a result, the HOA has not been identified as a respondent in the docket of this appeal, and it has not appeared before us. Nevertheless, we note that the appendices that have been submitted in this matter do not include copies of the HOA's opposition to Knox's motion for summary judgment or the transcript from the hearing on the matter. And because it was Knox's burden to provide this court with an adequate appellate record, even if the HOA had been made a proper party to this appeal, we presume that the missing documents supported the district court's decision, and, therefore, conclude that Knox failed to demonstrate that relief is warranted in this regard. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (explaining that it is appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision").

[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Eric Johnson, District Judge
John S. Rogers
Wright, Finlay & Zak, LLP/Las Vegas
Brandon Smerber Law Firm
Eighth District Court Clerk