

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH W. FOOSE,
Appellant,
vs.
JOYCE FOOSE,
Respondent.

No. 80572-COA

FILED

NOV 25 2020

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

ORDER OF AFFIRMANCE

Kenneth W. Foose appeals from a district court order granting summary judgment in an action for declaratory relief and to quiet title. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Appellant Kenneth Foose and respondent Joyce Foose were previously married in 1990, but divorced in 1993. As relevant here, Joyce was awarded the parties' marital residence pursuant to the terms of their joint petition for divorce. Additionally, shortly before the parties' divorce, Kenneth quitclaimed his interest in the property to Joyce. In 2001, Kenneth recorded an "equitable lien" against the subject property. In 2019, Joyce filed the underlying action seeking a declaratory judgment and to quiet title, arguing that Kenneth's lien was invalid as he failed to properly notice Joyce and that he never obtained an equitable lien or any judgment against Joyce. Additionally, she asserted that even if the lien were valid at the time it was recorded, it had long since expired as Kenneth never renewed the lien. The district court granted summary judgment in favor of Joyce,

finding that she was awarded the subject property as part of the parties' decree of divorce, that Kenneth quitclaimed his interest in the property to Joyce, and that Kenneth was never awarded an equitable lien or any other judgment from any court, such that the lien against the property was invalid. Additionally, the district court found, as Joyce contended, that even if the lien had been valid at the time it was recorded, it had since expired as Kenneth never renewed it. Accordingly, the district court concluded that the lien was invalid, that Kenneth had no interest in the subject property, and that Joyce owned the property in fee simple as her sole and separate property. This appeal followed.

On appeal, Kenneth concedes that the district court's order is correct "as to the law of liens." He only challenges the district court's order to the extent it relied on the decree of divorce to find that Joyce was awarded the subject property, arguing that the property was his separate property purchased prior to marriage and should not have been divided as community property.

As an initial matter, we note that the district court concluded Kenneth failed to timely file an opposition and he has not challenged that finding on appeal. Thus, because Kenneth failed to raise any arguments in the district court, he has waived any arguments 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 . . . is deemed to have been waived and will not be considered on appeal."). Similarly, Kenneth has failed to raise any

challenges to the basis upon which the district court relied in granting summary judgment—that he was never awarded an equitable lien or judgment of any kind against Joyce and even if he had a valid lien, it had since expired. Indeed, Kenneth concedes that the district court’s conclusion on this basis was proper. Thus, because Kenneth fails to raise any arguments addressing the grounds relied on by the district court, he has waived any such challenge and we necessarily affirm the district court’s order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (“Issues not raised in an appellant’s opening brief are deemed waived.”).

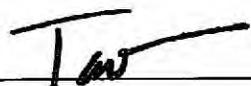
Regardless, we note that to the extent Kenneth is admittedly seeking only to challenge the parties’ decree of divorce as he believes the subject property was his separate property prior to marriage, that issue is not properly before this court on appeal and his time to appeal from the decree has expired. *See* NRAP 3 (providing that an appeal may only be taken by timely filing a notice of appeal with the district court and providing that the notice of appeal must include the judgment being appealed); NRAP 4(a) (providing that a notice of appeal must be filed no later than 30 days after the written notice of entry is served). Moreover, we decline Kenneth’s request to suspend the rules pursuant to NRAP 2 and extend the time to appeal pursuant to NRAP 26(b)(1)(A), as the rules do not allow this court to extend a party’s time to file a notice of appeal. *See* NRAP 2 (providing that the court may suspend a provision of the rules upon good cause shown,

“except as otherwise provided in Rule 26(b)”; NRAP 26(b)(1)(A) (providing that the court may not extend the time to file a notice of appeal, with limited exceptions not applicable here).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. John Schlegelmilch, District Judge
Kenneth W. Foose
Nevada Legal Services/Reno
Third District Court Clerk

¹Insofar as Kenneth raises 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.