

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIE MASILLO,  
Appellant,

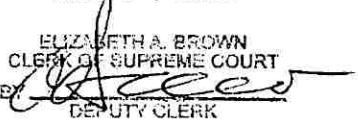
vs.

THE STATE OF NEVADA  
EMPLOYMENT SECURITY DIVISION;  
LYNDA PARVEN, IN HER CAPACITY  
AS ADMINISTRATOR OF THE  
EMPLOYMENT SECURITY DIVISION;  
AND J. THOMAS SUSICH, IN HIS  
CAPACITY AS CHAIRPERSON OF THE  
EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW,  
Respondents.

No. 85100-COA

FILED

MAY 24 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Julie Masillo appeals from a district court order dismissing a petition for judicial review in an unemployment assistance matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Masillo filed a claim for Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) under the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (the CARES Act), and initially received both PUA and FPUC benefits. However, respondent the State of Nevada Employment Security Division (ESD) later determined that Masillo was ineligible for PUA and FPUC benefits under the CARES Act and issued overpayment notices. Masillo appealed that decision, but the appeals referee upheld the decision, and the board of review declined further review.

Masillo then petitioned the district court for judicial review, and respondents, which include ESD; the administrator of ESD, Lynda

Parven; and the chair of the board of review, J. Thomas Susich, filed an answer. Respondents subsequently moved to dismiss the petition, arguing that Masillo failed to comply with NRS 233B.133(1) because she did not file and serve a memorandum of points and authorities within 40 days after they served her with notice that the administrative record had been filed in the district court. Although Masillo did not file a written opposition to respondents' motion, the district court nevertheless proceeded with a hearing on the motion. However, Masillo failed to appear at the time that had been scheduled for the hearing, and the district court orally granted respondents' motion based on Masillo's failure to oppose it and her failure to file a memorandum of points and authorities. While Masillo later appeared before the district court on the day of the hearing, the court declined to revisit its decision, and it subsequently entered a written order dismissing Masillo's petition. This appeal followed.

Under EDCR 2.20(e), the district court may construe a party's failure to oppose a motion "as an admission that the motion . . . is meritorious and a consent to granting the same." *See King v. Carlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005) (discussing DCR 13(3), which is substantively identical to EDCR 2.20(e), and explaining that a party's failure to timely oppose a motion is "sufficient grounds for the district court to deem [the] motion unopposed and thus meritorious"). This court reviews an order granting a motion to dismiss a petition for judicial review as unopposed for an abuse of discretion. *See State, Dep't of Motor Vehicles & Pub. Safety v. Moss*, 106 Nev. 866, 868, 802 P.2d 627, 628 (1990) (reviewing a district court order that granted a petition for judicial review based on a prior version of EDCR 2.20(e) for an abuse of discretion).

On appeal, Masillo's informal brief primarily discusses the proceedings before ESD, but she raises one issue relevant to the district court's decision to dismiss her petition for judicial review insofar as that decision was based on her failure to oppose respondents' motion to dismiss. In particular, Masillo essentially contends that the district court improperly granted respondents' motion as unopposed based on her failure to appear at the hearing on the matter at the time for which it was originally scheduled because the hearing had been rescheduled to a later time, which was when she appeared before the district court. However, no order rescheduling the hearing on respondents' motion was entered in the underlying proceeding. And although Masillo asserts that, prior to the hearing, she received a notice indicating that it had been rescheduled, she did not submit any documentation below to demonstrate the same, and as a result, the record before this court is devoid of any such documentation. As the appellant, it was Masillo's duty to ensure that an adequate appellate record was prepared for this court's review, and because she apparently failed to do so, we presume that any missing documents support the district court's decision. *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 Nevada's appellate courts presume that materials missing from the trial court record support the district court's decision). And regardless of Masillo's argument regarding the timing of the hearing, as noted above, the record demonstrates that she did not file a written opposition to the motion to dismiss and, on appeal, she fails to address this point. Thus, in light of the foregoing, Masillo has not demonstrated that the district court abused its

discretion by granting respondents' motion to dismiss her petition for judicial review as unopposed. *See Moss*, 106 Nev. at 868, 802 P.2d at 628.

Moreover, although Masillo challenges the district court's decision to dismiss her petition for judicial review as unopposed, she overlooks that the district court also granted the motion to dismiss based on her failure to file a memorandum of points and authorities in accordance with NRS 233B.133(1). Because Masillo does not challenge the propriety of that determination on appeal, she cannot establish that reversal is warranted. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1288 (2022) (providing that an appellant must challenge all of the independent alternative grounds relied upon by the district court to obtain reversal). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>1</sup>Insofar as Masillo raises 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.

The Honorable Michael Gibbons, Chief Judge, did not participate in the decision of this matter.

cc: Hon. Mark R. Denton, District Judge  
Julie Masillo  
State of Nevada/DETR  
Eighth District Court Clerk