

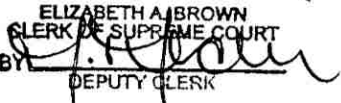
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAN VAN BLARCOM, AN
INDIVIDUAL,
Appellant,
vs.
SUN CITY MACDONALD RANCH
COMMUNITY ASSOCIATION, INC., AN
INDIVIDUAL,
Respondent.

No. 83924-COA

FILED

JUN 29 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joan Van Blarcom appeals from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Respondent Sun City MacDonald Ranch Community Association, Inc. (SCMR), is a common interest community as defined by NRS 116.021, and Van Blarcom is a member of SCMR. In 2019, Rocco Luiere, Jr., who was the president of SCMR's board of directors at the time, brought a defamation action against Van Blarcom, and the district court eventually entered summary judgment against Van Blarcom as to liability.¹

¹Van Blarcom represents in her opening brief that the defamation action later proceeded to a six-day jury trial on damages that resulted in a \$0.03 judgment for Luiere, which SCMR does not dispute.

Prior to entry of summary judgment in the defamation action, Van Blarcom commenced the underlying proceeding against SCMR, alleging that Luiere, acting as an agent of SCMR, filed the defamation action to harass or retaliate against her for raising concerns regarding SCMR's alleged violation of its covenants, conditions, and restrictions and Nevada law. Based on that allegation, Van Blarcom asserted claims against SCMR for respondeat superior liability; negligent training and supervision; intentional infliction of emotional distress; negligent infliction of emotional distress; and violations of NRS 116.1113,² NRS 116.31183,³ and NRS 116.31184.⁴

Following the entry of summary judgment in the defamation action, SCMR moved for summary judgment in the underlying proceeding.

²NRS 116.1113 imposes an obligation of good faith on HOAs in the "performance or enforcement" of "[e]very contract or duty governed by [NRS Chapter 116]."

³NRS 116.31183 prohibits various persons associated with an HOA from taking "any retaliatory action against a unit's owner because the unit's owner has," among other things, "[c]omplained in good faith about any alleged violation of any provision of [NRS Chapter 116] or the governing documents of the association."

⁴NRS 116.31184 provides that it is a misdemeanor for various persons associated with an HOA to "willfully and without legal authority threaten, harass or otherwise engage in a course of conduct against" various persons associated with an HOA, including unit owners or their guests, which "[c]auses harm or serious emotional distress" or "[c]reates a hostile environment for that person."

In particular, SCMR argued that summary judgment was warranted for the following reasons: (1) Van Blarcom failed to present any evidence to show that the defamation action was brought as a form of harassment or retaliation or that Luiere filed the action on behalf of SCMR; (2) the summary judgment in the defamation action established that it was meritorious such that there was no genuine dispute of material fact as to Van Blarcom's harassment and retaliation allegations; and (3) Van Blarcom's claims were barred by claim and issue preclusion in light of the summary judgment. Van Blarcom opposed SCMR's motion by baldly stating that the summary judgment in the defamation action was irrelevant; arguing the merits of the defamation action; and asserting that NRS 38.310 did not require her to submit her claim to mediation, although the issue had not been raised by SCMR. In its reply brief, SCMR reiterated its prior arguments and further asserted that summary judgment was warranted based on Van Blarcom's failure to meaningfully oppose its motion and that mediation was required pursuant to NRS 38.310. Following a hearing, the district court summarily granted SCMR's motion. 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 dispute 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 disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Van Blarcom argues that she was entitled to bring a cause of action under NRS 116.31183 against SCMR based on Luiere's alleged retaliatory defamation action and that SCMR could be held liable, even if the action was meritorious, provided that he filed it to dissuade her from criticizing the board of directors and its members, which she contends was a question of fact for the jury. However, Van Blarcom did not raise these issues in her opposition to SCMR's motion for summary judgment, and she waived them as a result.⁵ *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Moreover, although the challenged order does not include specific findings, *see* NRCP 56(a) (encouraging the district court to "state on the record the reasons for granting or denying [a] motion [for summary judgment]," without requiring it to do so), the district court did grant SCMR's motion, which was based on

⁵Although Van Blarcom may have presented additional arguments at the hearing on SCMR's motion for summary judgment, she has failed to provide this court with a copy of the transcript from the hearing, such that we cannot discern what arguments she orally raised. Because it was Van Blarcom's burden to provide this court with an adequate appellate record, we presume that the missing transcript supported 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).

several alternate theories, and Van Blarcom does not meaningfully address several of them on appeal, including SCMR's arguments that she failed to produce relevant evidence and that summary judgment was warranted on confession of error grounds. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1288 (Ct. App. 2022) (providing that an appellant must challenge all of the independent alternative grounds relied upon by the district court to obtain reversal). Thus, for the foregoing reasons, we conclude that Van Blarcom failed to demonstrate that the district court erred by granting SCMR's motion for summary judgment. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

⁶The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Christy L. Craig, District Judge
Paul M. Haire, Settlement Judge
The Law Offices of Laura Payne, Esq.
Olson, Cannon, Gormley, & Stoberski
Eighth District Court Clerk