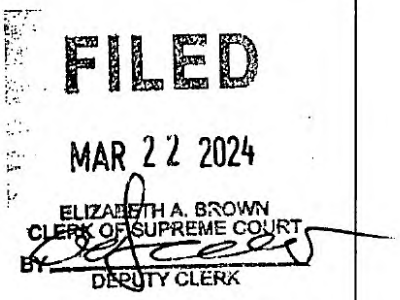
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY P. ZAMORA,
Appellant,
vs.
CHRISTOPHER KLEIN, AN INDIVIDUAL,
Respondent.

No. 86293-COA



ORDER OF AFFIRMANCE

Gregory P. Zamora appeals from an order granting summary judgment in a contract action. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge; Eighth Judicial District Court, Clark County; Jacob A. Reynolds, Judge.[1]

On January 27, 2021, Zamora executed a residential purchase agreement (RPA) to sell his residential property in Las Vegas to respondent Christopher Klein for $615,000.[2] To fund the purchase price, the RPA required Klein to make a $10,000 earnest money deposit (EMD) into escrow by February 1, provide a loan application and loan preapproval letter to Zamora also by February 1, and deposit the required loan amount of $492,000 and other funds into escrow by March 3, the initial closing date. The RPA expressly granted Zamora the right to cancel the RPA if Klein

[1]We note that the Honorable David Jones, Judge, conducted the hearing on the parties' respective motions, presided over the evidentiary hearing, issued a minute order granting summary judgment in favor of respondent Christopher Klein and instructed Klein's attorney to prepare the order. The Honorable Michael A. Cherry, Senior Judge, signed the order granting summary judgment, and the Honorable Jacob A. Reynolds, Judge, heard the motion for reconsideration and signed the order denying it.

[2]We do not recount the facts except as necessary for our disposition.

failed to complete the pre-closing loan requirements by February 1. Section 24(B) of the RPA contained the cancellation provision that stated:

> When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. . . . Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

Under one of the final sections, titled "OTHER ESSENTIAL TERMS," the RPA stated "[t]ime is of the essence."

Klein transferred the $10,000 EMD into escrow on February 2, one day after the agreed-upon deadline.[3] Klein also failed to submit a loan application by February 1 and never furnished a loan preapproval letter during the pendency of the RPA. Zamora did not take issue with Klein's failure to timely complete these pre-closing conditions, and on March 8 the parties executed an addendum that, among other changes, moved the closing deadline to March 31.

Klein deposited the loan amount of $430,000 into escrow on March 25 and signed the closing documents on March 28. Although the loan amount deposited was $63,000 lower than the agreed-upon loan amount, according to the escrow report, Klein deposited a remaining balance of $193,720.10 into escrow by the closing deadline of March 31. Zamora was scheduled to sign his closing documents on March 29; however, 20 minutes before the time to do so, Zamora sent an email to Klein's real estate agent and the escrow officer stating "[t]he signing scheduled for 4pm today March

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[3]While Zamora argues that Klein was required to transfer the EMD by January 30, 2021, we note that January 30 was a Saturday, and therefore the third business day after Zamora's acceptance was February 1.

29th 2021 is postponed until further notice, as there are too many unresolved discrepancies listed on the financial breakdown from Fidelity National Title." Zamora asserted that he did not see Klein's $10,000 EMD on the escrow report and the report contained several inaccurate amounts regarding his own loans on the real property. Zamora did not sign the closing documents to finalize the sale of his residence by March 31 as previously agreed. After the March 31 closing deadline as set forth in the parties' addendum expired, the parties continued to discuss completing the sale, but were neither able to reach a new agreement nor finalize the original RPA as Zamora would not sign the closing documents.

Several months later, Klein filed a complaint against Zamora alleging breach of contract and breach of the implied covenant of good faith and fair dealing and seeking specific performance of the RPA. Klein moved for summary judgment, arguing that, as a matter of law, Zamora breached the RPA by failing to sign closing documents when Klein had fulfilled his obligations as the buyer by the closing deadline. Zamora filed an opposition and his own motion for summary judgment, arguing that, as a matter of law, Klein breached the RPA by failing to complete several pre-closing conditions, and therefore Zamora was not obligated to perform. Zamora also argued that, under the RPA, he had the right to cancel the agreement because of Klein's failures to complete the pre-closing conditions and that he exercised his right by failing to sign the closing documents by March 31.

Following a hearing on the motions as well as an evidentiary hearing, the district court entered a minute order granting Klein summary judgment and directing Klein's counsel to prepare the order. The district court adopted verbatim Klein's proposed findings of fact, conclusions of law, and judgment. The district court found that Klein complied with the RPA

by fully funding the escrow account and executing the necessary closing documents before the close of escrow on March 31. The court also found that, while Klein transferred the EMD one day late, his late deposit did not affect the closing deadline of March 31, which the parties had agreed to in the addendum to the RPA. Further, the court found that although Klein's failure to furnish a loan preapproval letter granted Zamora the power to cancel the RPA, the RPA required a cancelling party to provide written notice of cancellation, which Zamora failed to do. Therefore, the district court found that while Klein had fully performed as the buyer, Zamora as the seller failed to fully perform as agreed. Thus, the district court found Zamora to be in breach of the RPA and granted Klein's request for specific performance to complete the sale of the residence as the parties had previously agreed. This appeal followed.

On appeal, Zamora raises several threshold arguments. First, Zamora argues that the district court erred by failing to make independent findings on the record under NRCP 52(a)(3) and NRCP 56(a) explaining why it granted Klein summary judgment.[4] Second, Zamora contends that the

[4]We reject this argument upfront insofar as both NRCP 52(a)(3) and NRCP 56(a) state that district courts *should* state findings on the record but do not mandate it. In any event, the district court here made sufficient findings for the record on appeal when it adopted Klein's proposed findings of fact, conclusions of law, and judgment. *See Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482-84 (Ct. App. 2023) (explaining that district courts may adopt a party's proposed order verbatim without making independent findings on the record, and that we will review the contents of the order for error on appeal); *Eby v. Johnston L. Off., P.C.*, 138 Nev., Adv. Op. 63, 518 P.3d 517, 526 (Ct. App. 2022) (explaining that a written order controls over conflicting oral findings made at a hearing). We note that Klein sent the order to Zamora for review and approval before filing. Zamora made no objection, but refused to sign off on the form and content of the order based on his stated intent to appeal.

district court erred in granting Klein summary judgment because he breached the RPA first and time was of the essence. Third, Zamora argues that the district court erred in judicially imputing a written notice of cancellation requirement into the RPA and thereby finding that Zamora did not sufficiently cancel the RPA by his conduct of not signing the closing documents by March 31. Fourth, Zamora argues that the district court denied him due process by resolving factual disputes at the evidentiary hearing instead of a trial.[5] Zamora also raises several other arguments, which we address below. We begin by addressing his second and third arguments on the merits.

This court reviews a district court's order granting summary judgment de novo and views "the evidence, and any reasonable inferences drawn from it, . . . in a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). "A[ ] [dispute] of material fact is genuine when the

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[5]Zamora failed to raise this issue in the district court and therefore has waived it on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal"). Even if we were to consider addressing this argument on its merits, which we decline to do, we would not be persuaded as a proper grant of summary judgment generally does not violate the right to trial. *See Shannon v. Graves*, 257 F.3d 1164, 1167 (10th Cir. 2001) (explaining that a proper grant of summary judgment does not violate a party's right to trial "because such a ruling means that no triable issue exists to be" determined at trial); *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005) (recognizing that federal cases are persuasive authority in interpreting the Nevada Rules of Civil Procedure).

evidence is such that a rational jury could return a verdict in favor of the nonmoving party." *George L. Brown Ins. v. Star Ins. Co.*, 126 Nev. 316, 323, 237 P.3d 92, 96 (2010). Additionally, contract interpretation is a question of law and therefore reviewed de novo. *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015). Contracts must be read as a whole and, if the language is clear and unambiguous, enforced as written. *Id.* (explaining that unambiguous contracts are enforced as written); *Rd. & Highway Builders v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012) (explaining that contracts must be read as a whole without negating any provision therein).

With respect to Zamora's second argument on appeal, he centrally contends that the district court erred in granting Klein summary judgment because Klein breached the RPA first by failing to fulfill several pre-closing conditions where time was of the essence. Specifically, Zamora asserts that Klein breached the RPA when he failed to deposit the $10,000 in earnest money and submit a loan application by February 1, and failed to furnish a loan preapproval letter.[6] Therefore, Zamora argues he reserved the right to cancel the RPA, which he did by not signing the closing

[6]Zamora also argues that Klein breached the RPA by obtaining a loan for $430,000 rather than the agreed-upon $492,000. The RPA stated that Klein's obligation to purchase the home was "contingent upon [him] obtaining the loan referenced in Section 1(C) or 1(D)" for $492,000, and that he had the right to cancel the RPA within 23 days of acceptance if he could not obtain a loan for that amount. However, it also stated that if Klein did not cancel the RPA within 23 days of Zamora's acceptance, Klein was to "be deemed to have waived the loan contingency." Therefore, by not cancelling the RPA within 23 days of Zamora's acceptance, Klein waived the contingency of him obtaining a $492,000 loan, so his failure to obtain a loan in that amount did not constitute a breach. *See Soro*, 131 Nev. at 739, 359 P.3d at 106 (explaining that unambiguous contracts are enforced as written).

documents by the March 31 deadline. Klein responds that his failure to perform any pre-closing conditions did not materially affect the closing date of March 31 as the parties agreed to in the addendum to the RPA. Further, Klein argues that even if his failure to perform certain conditions granted Zamora the power to terminate the RPA, Zamora failed to do so in writing as required.

We begin by noting that Klein's one-day-late earnest money deposit did not affect the closing date of March 31 as agreed to by the parties in the addendum to the RPA. If "[a] contract that includes a clause providing in general terms that time is of the essence," such as the RPA here, the clause "does not necessarily apply to pre-closing conditions that do not affect the specified closing date." *Vanbuskirk v. Nakamura*, No. 67816, 2016 WL 2985026, at *2 (Nev. May 20, 2016) (Order of Reversal and Remand). In such cases, courts must determine whether the time-is-of-the-essence clause applies to a particular condition precedent. *Id.* If it does not, then a party must merely perform the condition within a reasonable time of the specified date. *Id.*

In this case, we conclude that the parties did not intend for the EMD provision to fall under the scope of the RPA's general time-is-of-the-essence clause because the parties did not abandon the RPA upon Klein's late deposit, but instead extended the closing deadline to March 31, nearly two months after Klein's late deposit. *See Mayfield v. Koroghli*, 124 Nev. 343, 349, 184 P.3d 362, 366 (2008) (explaining that circumstances may make time of the essence if a party expresses an "intention to abandon the contract unless it is completed within the specified time" (quoting 15 Richard A. Lord, *Williston on Contracts* § 46:16, at 484–85 (4th ed.2000))). And because we conclude that the time to deposit the EMD was not of the essence, we further

conclude that Klein's deposit, made just one day after the specified date, occurred within a reasonable time and did not adversely affect the closing date. *See id.* at 350-51, 184 P.3d at 367 (holding that based on the circumstances surrounding the contract at issue, a three-year delay in performance was within a reasonable time). Therefore, we conclude that Klein's late deposit of EMD did not constitute a material breach. *See Vanbuskirk*, 2016 WL 2985026, at *2.

Next, with respect to Zamora's third argument, while Klein's failure to furnish a loan preapproval letter may have granted Zamora the right to terminate the RPA,[7] Zamora failed to provide written notice of cancellation as required by the RPA. When a party wishes to exercise their right to cancel a contract, they must provide notice of cancellation "in accordance with the terms of the contract." 17B C.J.S. Contracts § 614 (2023); *see also Soro*, 131 Nev. at 739, 359 P.3d at 106 (explaining that unambiguous contracts are enforced as written). In this case, we conclude that the RPA required written notice of cancellation to be contemporaneously delivered to Klein's agent and the escrow officer. Specifically, we find that two provisions of the RPA, when read together, required written notice of cancellation. First, section 17 of the RPA, which is titled "CANCELLATION OF AGREEMENT," reads in pertinent part "[i]n the event this Agreement is properly cancelled in accordance with the *terms*

[7]Like Klein's late EMD, Zamora took no issue with Klein's failure to timely furnish a loan preapproval letter, as evidenced by his willingness to execute an addendum extending the close of escrow date to March 31. Further, Klein's failure to furnish a preapproval letter did not affect the closing date as evidenced by his ability to obtain a loan and deposit the amount in escrow prior to the closing deadline. *See Vanbuskirk*, 2016 WL 2985026, at *2.

contained herein, then buyer will be entitled to a refund of the EMD." (Emphasis added.) Second, section 24(B), titled "SIGNATURES, DELIVERIES, AND NOTICES" reads in pertinent part

> When a Party wishes to *provide notice as required in this Agreement*, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. . . . *Any cancellation notice* shall be contemporaneously delivered to Escrow in the same manner.

(Emphasis added.) Considering these sections together, we conclude that the plain language of the RPA required notice of cancellation to be delivered to both the agent of the other party and the escrow officer in the manner prescribed in section 24(B). *See Soro*, 131 Nev. at 739, 359 P.3d at 106. Reading the RPA as allowing either party to cancel the agreement by any means, as Zamora proposes, would render section 17's language "properly cancelled in accordance with the terms contained herein" meaningless because the RPA did not contain terms stating that the parties could cancel by any means. *See Rd. & Highway*, 128 Nev. at 390, 284 P.3d at 380. Rather, it contained terms requiring any cancellation notice to be delivered to escrow and the other party's agent by the methods prescribed under section 24(B).

Therefore, we conclude that Zamora failed to give proper notice of cancellation as required by the RPA. Although Zamora asserts that he complied with section 24(B)'s notice requirements when he sent the March 29 email stating that he was postponing the scheduled closing meeting, we are not persuaded by this argument. Postponing the closing meeting two days prior to the closing deadline did not give clear and unequivocal notice of his intent to cancel the RPA. *See Postpone*, *Black's Law Dictionary* (11th ed. 2019) (stating that the word "postpone" means "[t]o put off to a later time;

to change the date or time for a planned event or action to a later one"); *Nev. State Educ. Ass'n v. Clark Cnty. Educ. Ass'n (NSEA)*, 137 Nev. 76, 81, 482 P.3d 665, 671 (2021) (explaining that notice of cancellation of a contract must be "clear and unequivocal"). And Zamora failed to otherwise send written notice of cancellation as required by the RPA by March 31 as discussed above. Thus, we conclude that the district court did not err in finding that Zamora failed to unequivocally cancel the RPA in writing as required, and that the closing deadline of March 31 remained in effect, notwithstanding his email of March 29 postponing his signing of the closing documents.

Zamora also raises several other arguments on appeal, which we briefly address. First, Zamora argues that his performance was excused by the expiration of the RPA on March 31, and therefore specific performance should not have been granted. Here, Klein undisputedly performed his obligations as the buyer by signing all necessary documents and fully funding escrow by March 31, and thus specific performance was an available remedy and we reject Zamora's claim. *See Mayfield*, 124 Nev. at 351-52, 184 P.3d at 367-68 (explaining that specific performance is appropriate where a party performs or is ready, willing, and able to tender performance).

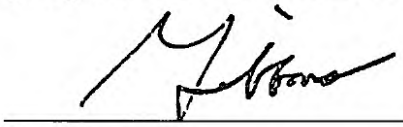
Second, Zamora argues that the district court's interpretation of the RPA's time-is-of-the-essence clause and provision granting Zamora the right to cancel rendered it meaningless or illusory. However, he fails to cogently argue his position. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks support of relevant authority). Nevertheless, we reject his argument because Zamora failed to exercise his right to cancel in accordance

with the RPA. *See NSEA*, 137 Nev. at 81, 482 P.3d at 671 (explaining that notice of cancellation must be clear and unequivocal).

Third, Zamora fails to cogently argue his position that the district court erred when it considered communications after March 31 to "revive the expired RPA." *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. However, regardless of what communications occurred between the parties *after* March 31, Zamora was in breach of the RPA by failing to perform by the March 31 closing deadline. Thus, the fact that the parties attempted to reach a new agreement after March 31 is not relevant to our disposition. *See Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 446 n.14 (Ct. App. 2023) (explaining that this court need not address issues that are unnecessary to resolve the case at bar).[8]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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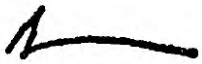
Gibbons



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[8]Insofar as Zamora raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief. In doing so, we note that based on the record before us substantial evidence supported the district court's order granting summary judgment, particularly where the district court's order specified that it was granting relief for Zamora's breach of the RPA. Further, the district court did not abuse its discretion by denying Zamora's motion for reconsideration, which seemingly raised the same issues before the district court that it had already resolved and which we affirm on appeal. *See Engelson*, 139 Nev., Adv. Op. 58, 542 P.3d at 441 (reviewing an order resolving a reconsideration motion for an abuse of discretion).

cc: Hon. Michael A. Cherry, Senior Judge
Hon. Jacob A. Reynolds
William C. Turner, Settlement Judge
V3 Law, LLC
O'Reilly Law Group
Eighth District Court Clerk