

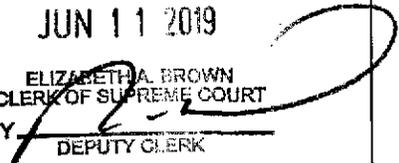
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARRY HART, A/K/A HARTCO
DESIGN BUILDERS, D/B/A HARTCO,
Appellant,
vs.
OFFICE DEPOT, INC., A DELAWARE
CORPORATION; AND ALL AMERICAN
FACILITIES MAINTENANCE, INC., A
FLORIDA CORPORATION,
Respondents.

No. 76288-COA

FILED

JUN 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Garry Hart appeals from a district court order expunging a mechanic's lien. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Respondent Office Depot, Inc. contracted with respondent All American Facilities Maintenance, Inc. (AAFM) to remodel one of Office Depot's stores. AAFM then retained Hart to perform certain construction work at the location. Hart subsequently filed a mechanic's lien asserting that Office Depot failed to pay him \$171,580.00 for the work he performed. AAFM then filed a motion to expunge Hart's mechanic's lien pursuant to NRS 108.2275, asserting that Hart's lien was frivolous and excessive and should be declared void. Specifically, AAFM asserted that the agreement between it and Hart consisted of a Not to Exceed vendor agreement, which provided that Hart would not exceed \$35,000.00 in costs without written approval from AAFM and that Hart failed to provide any evidence supporting the alleged \$171,580.00 owed. Additionally, AAFM argued that

Hart's lien incorrectly states that his contract was with Office Depot, when no such contract existed as AAFM retained Hart's services, not Office Depot. Hart opposed the motion to expunge and filed a counter-motion to enforce his lien and dismiss respondents' motion to expunge. The district court granted AAFM's motion to expunge; denied Hart's counter-motion, and awarded respondents attorney fees and costs. This appeal followed.

On appeal, Hart first asserts that he was not properly served pursuant to NRCP 4 and the district court erred in failing to dismiss the motion to expunge based on improper service. This court reviews motions to dismiss based on improper service for an abuse of discretion. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). Further, "[t]his court will not disturb the district court's factual determinations if substantial evidence supports those determinations" and "will only set aside findings that are clearly erroneous." *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 380-81, 240 P.3d 1033, 1043 (2010). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* at 380, 240 P.3d at 1043. Here, based on the filed affidavit of service, the district court concluded that service was proper pursuant to NRCP 4(d)(6) by serving Steven Williams, an agent authorized to accept service at Hart's business address. Additionally, the district court noted that Williams was served at Hart's normal place of abode. Based on our review of the record, we cannot conclude that the district court's finding was an abuse of discretion. See *id.* at 380-81, 240 P.3d at 1043; *Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200.

Next, Hart contends that the district court erred in ignoring the fact that respondents did not file a complaint. Specifically, Hart asserts that without a complaint, respondents could not state a claim upon which relief could be granted, pursuant to NRCP 12(b). This argument lacks merit. NRS 108.2275, the statute governing frivolous or excessive liens, specifically provides that a debtor of the lien “may apply by motion to the district court” and does not require the debtor to file a complaint.

Hart also contends that the district court violated his right to due process by failing to acknowledge he was not properly served, by failing to require a summons and complaint be filed, and by failing to hold an evidentiary hearing on respondents’ motion to expunge. Due process requires notice and a meaningful opportunity to be heard, but “is flexible and calls for such procedural protections as the particular situation demands.” *J.D. Constr.*, 126 Nev. at 376, 240 P.3d at 1040. In deciding a motion to expunge pursuant to NRS 108.2275, “the district court is not required to hold a full evidentiary hearing, but instead may base its decision on affidavits and documentary evidence submitted by the parties.” *Id.* at 369, 240 P.3d at 1035-36; *cf. State v. Beaudion*, 131 Nev. 473, 480, 352 P.3d 39, 44 (2015) (concluding that the use of the term “hearing” in a statute “does not mandate an oral hearing in all instances”). And when the district court decides the factual issues on the basis of the affidavits and supporting documents, the court does not violate due process. *J.D. Constr.*, 126 Nev. at 377, 240 P.3d at 1041. Here, Hart was provided a meaningful opportunity to present evidence in his opposition to the motion to expunge. Indeed, Hart provided his alleged contract and made numerous arguments

in his opposition. Thus, because both parties were afforded sufficient opportunity to present their positions through affidavits and supporting documents, due process was satisfied. Similarly, because we discern no error in the district court's finding proper service and because a complaint was not required, we likewise cannot conclude those alleged errors amounted to a due process violation.

Finally, Hart contends that the district court erred in dismissing his lien, as he asserts that the lien was valid, and awarding respondents their attorney fees. As noted above, this court will not disturb a district court's factual findings if supported by substantial evidence. *Id.* at 380, 240 P.3d at 1043. Here, the district court made numerous findings as to veracity of the evidence before it and concluded that Hart failed to present any evidence supporting the amount of his lien or that he was entitled to any amount beyond what he was already paid by AAFM. Additionally, the district court concluded that the lien was not only excessive, but was frivolous. Based on the record before this court, substantial evidence supports the district court's findings such that we cannot conclude that the district court abused its discretion in making such findings and dismissing Hart's lien. *See id.* We likewise discern no abuse of discretion in the district court's award of attorney fees and costs as such fees and costs were mandatory pursuant to statute. NRS 108.2275(6)(a) (requiring an award of attorney fees and costs if the district court concludes the lien is frivolous); *see also Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67,

80, 319 P.3d 606, 615 (2014) (this court reviews an award of attorney fees for an abuse of discretion).¹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
Garry Hart
Tony M. May, P.C.
Eighth District Court Clerk

¹Insofar as the parties raise 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.