

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK BROWN,
Appellant,
vs.
JOHN HALKI, M.D.,
Respondent.

No. 45131

FILED

OCT 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Castells*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a medical malpractice action. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Mark Brown appeals from a district court order granting a motion to dismiss by respondent John Halki, M.D., for failure to timely file a case conference report pursuant to NRCP 16.1(e)(2). On appeal, Brown argues that the district court erred by declining to do the following: (1) consider whether Dr. Halki was actually prejudiced by the delay in filing; (2) apply a heightened standard of review¹ because, with the expiration of the statute of limitations on his claim, the order granting dismissal without prejudice was effectively an order granting dismissal with prejudice; and (3) consider alternate, lesser sanctions. In response, Dr. Halki asserts that a showing of prejudice is not required for a

¹This heightened standard of review is represented by a non-exhaustive list of factors that the district court should assess when considering a sanction of dismissal with prejudice. Young v. Johnny Ribeiro Building, 106 Nev. 88, 92-93, 787 P.2d 777, 779-81 (1990).

dismissal under NRCP 16.1(e)(2). Dr. Halki also contends that Brown has waived the other issues because he failed to raise them in the trial court.

We review the district court's grant of a motion to dismiss under NRCP 16.1(e)(2) for an abuse of discretion.²

In a recent opinion, Arnold v. Kip, we addressed the district court's decision to grant a motion to dismiss without prejudice under NRCP 16.1(e)(2) and the factors that the district court may consider in deciding upon such a motion.³ We determined that the district court may consider factors that promote the purpose of the rule—the timely prosecution of litigation—rather than the consequences to the plaintiff of his or her failure to comply with the rule.⁴ Factors that the district court may consider include “whether the defendant induced or caused the delay” in filing the case conference report, or “whether the delay has otherwise impeded the timely prosecution of the case.”⁵

However, Arnold also makes clear that in deciding upon a motion to dismiss under NRCP 16.1(e)(2), the district court is not required to consider whether the defendant was actually prejudiced by the delay in filing.⁶ In so holding, we stated that a contrary holding would “eviscerate the rule because it would allow plaintiffs to exceed the deadline for filing a

²Arnold v. Kip, 123 Nev. ___, ___ P.3d ___ (Adv. Op. No. 41, October 11, 2007).

³Id.

⁴Id.

⁵Id. (Adv. Op. at 8)

⁶Id.

case conference report as long as the defendant could not demonstrate prejudice.”⁷ Our conclusion in Arnold thus clarified our prior holding in Dougan v. Gustaveson,⁸ to the extent that Dougan suggested that the district court must consider whether the defendant was prejudiced in deciding upon a motion to dismiss under NRCP 16.1(e)(2).⁹ Based on our reasoning in Arnold, we conclude that the district court in this case did not abuse its discretion by declining to determine whether Dr. Halki was prejudiced by Brown’s failure to timely file a case conference report.

Furthermore, the record indicates that Brown did not raise before the trial court the remaining issues on appeal. “A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”¹⁰ Thus, we determine that these remaining issues have been waived, and we do not address them.

Accordingly, for the reasons stated above and in the absence of an abuse of discretion by the district court, we affirm the district court’s order granting Dr. Halki’s motion to dismiss without prejudice under NRCP 16.1(e)(2).

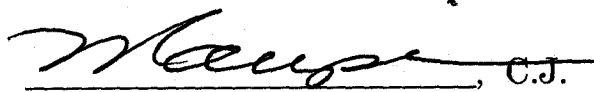
⁷Arnold, 123 Nev. at, ___ P.3d at ___ (Adv. Op. at 7).

⁸108 Nev. 517, 835 P.2d 795 (1992), abrogated in part on other grounds by Scrimmer v. Dist. Ct., 116 Nev. 507, 998 P.2d 1190 (2000).

⁹Arnold, 123 Nev. at, ___ P.3d at ___.

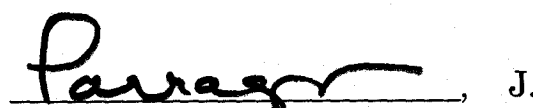
¹⁰Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

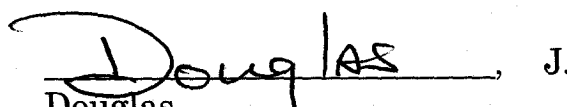
It is so ORDERED.

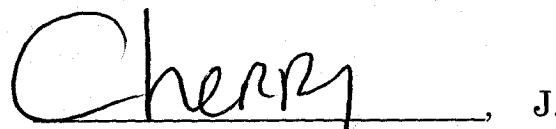

Maupin, C.J.



Gibbons, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

cc: Hon. Steven R. Kosach, District Judge
Patrick O. King, Settlement Judge
Perry & Spann/Reno
Lemons Grundy & Eisenberg
Washoe District Court Clerk