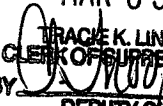


IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY LEVY,
Appellant,
vs.
BROCK INTERIORS, INC.; AND
FLAMINGO 26, LLC, D/B/A FLAMINGO
ROAD APARTMENTS,
Respondents.

No. 50810

FILED

MAR 05 2009
TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a tort action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

This case was initiated when appellant Mary Levy filed a complaint in district court seeking tort damages for a personal injury claim. On June 28, 2007, respondent Brock Interiors, Inc., as a defendant in the district court proceedings, filed an NRCP 25(a)(1) suggestion of death for the plaintiff, Mary Levy. Thereafter, on September 27, 2007, respondent Flamingo 26, LLC, filed a motion to dismiss the matter, as no motion to substitute had been filed within 90 days of the filing of the suggestion of death.¹ See NRCP 25(a). On October 3, 2007, the personal representative of Levy's Estate (Levy) filed a motion to amend the complaint, and later filed, on October 16, 2007, an opposition to the motion to dismiss. After a hearing, the district court entered an order granting

¹Brock Interiors subsequently filed a joinder to Flamingo's motion to dismiss.

the motion to dismiss. Levy has timely appealed the district court dismissal order.

On appeal, Levy argues that the district court either abused its discretion or committed plain error in dismissing her complaint under NRCP 25(a)(1) without considering that NRCP 6(b) grants the district court authority to enlarge the 90-day deadline even after the specified period of time to act has expired. Further, Levy contends that NRCP 6(b)'s requirement of excusable neglect had been satisfied here.

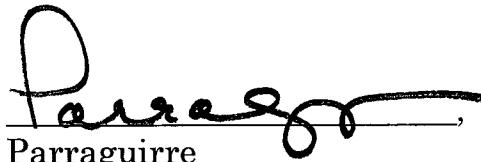
Brock Interiors, however, asserts that Levy has failed to preserve for appeal the issue of NRCP 6(b) relief because she failed to ever present this argument to the district court. In its separate answering brief, Flamingo argues, among other things, that the district court properly dismissed the complaint because Levy failed to meet NRCP 25(a)(1)'s 90-day deadline.

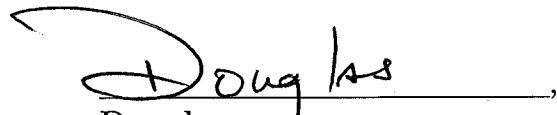
Having reviewed the briefs and the record on appeal, we conclude that Levy has raised the argument regarding NRCP 6(b)'s applicability to NRCP 25(a)(1) for the first time on appeal. As a result, the argument has been waived and is not appropriate for appellate review. See Hampe v. Foote, 118 Nev. 405, 409 n.10, 47 P.3d 438, 440 n.10 (2002), abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008). Here, Levy did not request NRCP 6(b) relief in either her opposition to the motion to dismiss or her separately filed motion to amend the complaint. Additionally, while Levy asserts in her reply brief that NRCP 7(b) provides that a motion need not be in writing if made during a hearing or trial, she cites to no portion of the record which indicates that she made such an oral motion for NRCP 6(b) relief and our own review of the record on appeal, particularly the

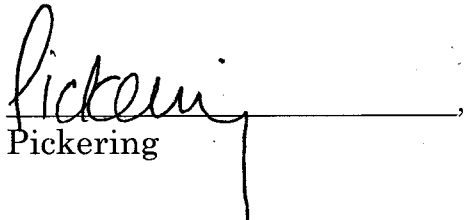
transcript of the October 31, 2007, district court proceedings regarding the motion to dismiss, similarly failed to reveal support that this argument was presented to the district court.

Further, this court recently acknowledged the apparent conflict between the language of NRCP 6(b) and NRCP 25(a) in Moseley v. District Court, 124 Nev. ___, ___, 188 P.3d 1136, 1143-44 (2008). Accordingly, we also disagree with Levy's contention that the district court committed plain error by failing to raise sua sponte the availability of NRCP 6(b) relief. Cf. Lioce v. Cohen, 124 Nev. ___, ___, 174 P.3d 970, 981-82 (2008) (noting that a failure to object may not preclude appellate review in the case of plain error). Accordingly, as we conclude that all of Levy's arguments on appeal pertain to an issue that was not presented to the district court, we

ORDER the judgment of the district court AFFIRMED.²

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

²To the extent that Levy separately argues that dismissal of her case contravenes this state's policy of favoring a trial on the merits, we reject this argument as without merit.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Craig A. Hoppe, Settlement Judge
Richard Harris Law Firm
Bremer Whyte Brown & O'Meara, LLP
Cohen, Johnson & Day
Eighth District Court Clerk