

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDA MARIE HARRIS,  
Appellant,  
vs.  
MIYOKO ASAYAMA,  
Respondent.

No. 51388

**FILED**

DEC 16 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Linda Marie Harris's sole argument on appeal is that the district court's dismissal of her case, pursuant to NRCP 16.1(e)(1) for failure to timely hold a case conference was improper because the deadline for holding the case conference did not begin to run until her case was exempted from the court-annexed arbitration program.<sup>1</sup> This argument, however, was not made in the district court, where Harris instead acknowledged that the case conference had been untimely held,

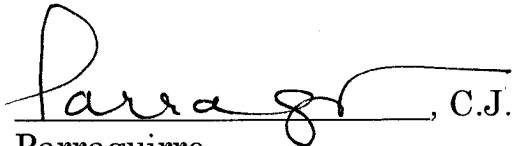
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<sup>1</sup>On appeal, Harris also purports to challenge the district court's post-dismissal order denying her motion to continue the early case conference. Because this court lacks jurisdiction to consider an appeal from such an order, see NRAP 3A(b) (setting forth orders from which an appeal may be taken), we dismiss her appeal from that order. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that an appeal may be taken only when the appeal is authorized by statute or court rule). As a result, we need not consider appellant's arguments related to the denial of that motion.

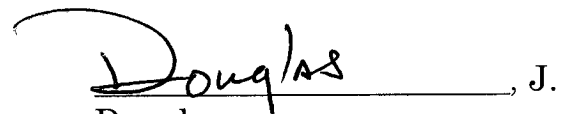
but argued that because the conference was held only 15 days beyond NRCPC 16.1(e)(1)'s 180-day period, the delay in holding the conference should be excused. It is well established that this court will not consider an argument raised for the first time on appeal. See Canyon Villas v. State, Tax Comm'n, 124 Nev. 832, 845 n.27, 192 P.3d 746, 754-55 n.27 (2008).


Our dissenting colleague's statement that this court is inconsistent in its application of this policy is puzzling. While instances may exist, none have been brought to our attention and we reject any characterization that this court is inclined to consider such issues first raised on appeal. Our colleague's desire to reach the merits in this case is in fact contrary to the consistency policy that he advocates. Because Harris's only appellate argument is raised for the first time on appeal, we will not consider it, and we necessarily affirm the district court's dismissal of her case. Id.


It is so ORDERED.

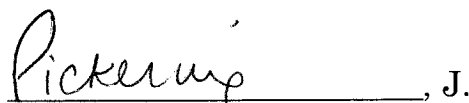
  
Parraguirre, C.J.

  
Hardesty, J.

  
Douglas, J.

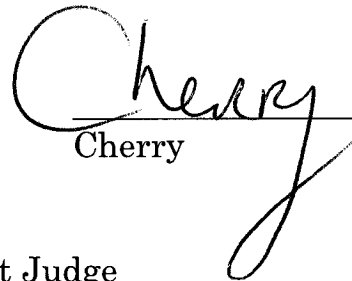
  
Saitta, J.

  
Gibbons, J.

  
Pickering, J.

CHERRY, J., dissenting:

In resolving this appeal, the court summarily affirms the district court's dismissal of this action under NRCP 16.1(e)(1) on the basis that the appellant raised her argument for the first time on appeal. This court has, in the past, overlooked an appellant's failure to raise arguments in the district court, when it wishes to address an argument that the appellant has not made below. I leave it to the members of the bar to pass judgment on whether this court has, in fact, decided issues raised for the first time on appeal. If I am correct, then I believe that the court must adopt a consistent posture on this issue, and to highlight this ongoing inconsistency, I must dissent. Consequently, I would reach the merits of appellant's appellate argument.

 \_\_\_\_\_, J.  
Cherry

cc: Hon. Michelle Leavitt, District Judge  
E. Paul Richitt Jr., Settlement Judge  
Bruce L. Gale  
The Law Offices of Arthur W. Tuverson  
Eighth District Court Clerk