

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHLEEN SHANNON,
INDIVIDUALLY AND AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF DANIEL M. SCANLON,
DECEDENT,
Appellant,
vs.
WILLOW CREEK MEMORY CARE
WEST, LLC, A NEVADA
CORPORATION; TINA ANDEREGG;
ALMA CURTIS; AND ANGELA
RODRIGUEZ,
Respondents.

No. 53999

FILED

NOV 10 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; Jessie Elizabeth Walsh, Judge.

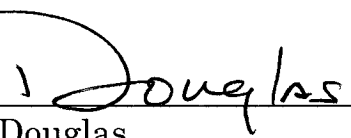
In opposing respondents' motion to dismiss the underlying case pursuant to NRCP 16.1(e)(2), appellant admitted that the joint case conference report was not timely filed within the required 240 days, but argued that her failure to comply with NRCP 16.1(e)(2)'s requirements constituted excusable neglect. On appeal, however, appellant maintains that she did comply with the requirements of NRCP 16.1(e)(2). We decline to consider this argument, which appellant raises for the first time on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (stating that a point not raised in the district court is deemed to have been waived and will not be considered on appeal); Arnold v. Kip, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007) (noting that a motion for reconsideration must have been resolved by the district court on the

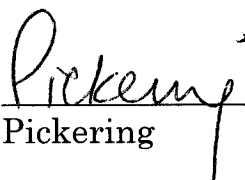
merits for the arguments raised therein to be properly before this court on appeal). Further, because appellant herself contended that she had failed to comply with NRCP 16.1(e)(2) in opposing the motion to dismiss, we reject as meritless appellant's contention that we should consider this argument despite it being raised for the first time on appeal because the dismissal of her case under NRCP 16.1(e)(2) constituted plain error.

Finally, based on our review of the parties' arguments and the documents before us, we agree with respondents that Arnold controls our resolution of this case and, under the standards set forth in Arnold, we find no abuse of discretion in the district court's dismissal of appellant's complaint under NRCP 16.1(e)(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge
Richard F. Scotti, Settlement Judge
Law Offices of Barry Levinson, P.C.
Lauria Tokunaga Gates & Linn, LLP
Eighth District Court Clerk