

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONI KEE, AN INDIVIDUAL,  
Appellant,  
vs.  
TERRIBLE'S PRIMM VALLEY CASINO  
RESORTS, A NEVADA DOMESTIC  
CORPORATION; AND BUFFALO  
BILLS RESORT & CASINO, A NEVADA  
DOMESTIC CORPORATION,  
Respondents.

No. 62527

**FILED**

JAN 21 2015

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 negligence and premises liability action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Shortly after appellant filed her complaint in the district court, respondents moved to dismiss that complaint on statute of limitations grounds. While respondents recognized that appellant's claims had previously been subject to an automatic bankruptcy stay, they contended that the action was untimely filed after the statute of limitations had expired and more than 30 days after appellant had received notice that the stay had been lifted to allow her to liquidate her potential claims against respondents. Appellant opposed the motion to dismiss, but the motion was ultimately granted by the district court.

On appeal, appellant argues that the district court erred by dismissing her complaint because the 30-day filing period had not yet started to run when her complaint was filed, an extension of time was warranted under NRCP 6(b), and the time for filing her complaint should have been equitably tolled to allow for any late filing. We review the

district court's dismissal order de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

With regard to the commencement of an action that is subject to an automatic bankruptcy stay, 11 U.S.C. § 108(c) provides that, when state law fixes a period of time for commencing a civil action against a debtor, and that period of time has not expired when the debtor files his or her bankruptcy petition, the time for filing such an action expires at the later of the end of the period set by law or "30 days after notice of the termination or expiration of the [bankruptcy] stay." Here, appellant does not dispute that the applicable statute of limitations had expired while the stay was pending, such that her complaint was due to be filed within 30 days after she received "notice of the termination" of the stay. Instead, she argues that "notice of the termination" of the stay was not provided because no notice of entry of the bankruptcy court's order terminating the stay was filed in the bankruptcy court or served on appellant.

Contrary to appellant's contention that notice of entry of an order is required to begin the 30-day period, 11 U.S.C. § 108(c) refers only to "notice of termination," not to an order or notice of entry of an order. Thus, the plain language of the statute demonstrates that the 30-day period begins to run when the party as to whom the stay is terminated actually receives notice that the bankruptcy stay has been terminated, regardless of the method by which notice is received. *See Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712, 715 (2007) ("Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language."); *Depner Architects & Planners, Inc. v. Nev. Nat'l Bank*, 104 Nev. 560, 562, 763 P.2d 1141, 1142 (1988) (explaining that, in the absence of evidence as to when a party received notice of the termination, the

district court could not properly determine when 11 U.S.C. § 108(c)'s 30-day period began to run). In this regard, appellant does not dispute that she failed to commence her action against respondents within 30 days of her receipt of actual notice that the stay had been terminated. As a result, we conclude that her complaint was untimely under 11 U.S.C. § 108(c).


As to appellant's argument that the district court should have granted an extension of the 30-day period under NRCP 6(b), that rule permits the district court to enlarge a period of time established by the Nevada Rules of Civil Procedure or court order. While the time period at issue here was triggered by the bankruptcy court's order permitting appellant to file her complaint, the 30-day period was established by statute. See 11 U.S.C. § 108(c). Thus, the district court correctly determined that NRCP 6(b) did not permit an extension of this deadline.

Finally, although a statute of limitations is subject to equitable tolling, see *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983), appellant has not established that equitable tolling was warranted in this case. In particular, appellant's reliance on the application of equitable tolling in *Rickard v. Montgomery Ward & Co., Inc.*, 120 Nev. 493, 96 P.3d 743 (2004), reversed on other grounds by *Carstarphen v. Milsner*, 128 Nev. \_\_\_, 270 P.3d 1251 (2012), is not well founded, as *Rickard* addressed the tolling of the five-year period set forth in NRCP 41(e) for bringing an action to trial, rather than the tolling of a statute of limitations, and appellant has not explained how the tolling principles set forth therein are relevant to the potential tolling of the statute of limitations in this case. Moreover, although appellant suggests on appeal that equitable tolling was warranted in light of the death of counsel's wife, the record does not demonstrate that appellant raised such

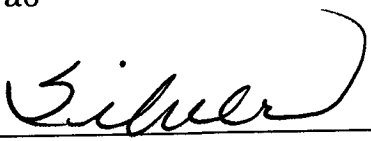
an argument in the district court, see *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”), and appellant has not developed the argument in this court by explaining how the circumstances presented here require application of equitable tolling or by supporting this request with authority demonstrating that other courts have applied equitable tolling under similar circumstances. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that an appellate court need not consider claims that are not cogently argued or supported by relevant authority). As a result, we decline to apply the doctrine of equitable tolling here.

For these reasons, we conclude that the district court correctly dismissed appellant’s complaint, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Michael Villani, District Judge  
Aaron & Paternoster, Ltd.  
Moran Law Firm, LLC  
Eighth District Court Clerk