

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO GONZALEZ, AN
INDIVIDUAL,
Appellant,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, A POLITICAL
SUBDIVISION OF CLARK COUNTY,
NEVADA,
Respondent.

No. 62636

FILED

NOV 21 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY K. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a request for costs and denying a motion to retax costs in a tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

On May 16, 2012, the district court filed an order for summary judgment in favor of respondent Las Vegas Metropolitan Police Department (LVMPD). On September 25, 2012, LVMPD filed a memorandum of costs. Appellant Francisco Gonzalez filed a motion to retax the costs of LVMPD. On January 28, 2013, the district court filed an order awarding LVMPD's costs and denying Gonzalez's motion to retax costs. On February 12, 2013, Gonzalez appealed the district court's order, arguing that the district court abused its discretion by (1) considering LVMPD's memorandum of costs when LVMPD filed it after the five-day deadline pursuant to NRS 18.110, and (2) finding that NRS 18.110 is not jurisdictional.

The district court did not abuse its discretion by considering LVMPD's memorandum of costs pursuant to NRS 18.110

Gonzalez argues that LVMPD's memorandum of costs was untimely because it was not filed within five days from the entry of the district court's judgment pursuant to NRS 18.110. Further, Gonzalez

argues that LVMPD did not show good cause for failing to file it within the deadline. We disagree.

We review the district court's decision to accept an untimely memorandum of costs pursuant to NRS 18.110(1) for an abuse of discretion. *Valladares v. DMJ, Inc.*, 110 Nev. 1291, 1293, 885 P.2d 580, 582 (1994). Further, "[s]tatutory interpretation is a question of law reviewed de novo." *Jacobson v. Estate of Clayton*, 121 Nev. 518, 520, 119 P.3d 132, 133 (2005) (quoting *Constr. Indus. Workers' Comp. Grp. v. Chalue*, 119 Nev. 348, 351, 74 P.3d 595, 597 (2003)). "[S]tatutes permitting recovery of costs are in derogation of common law, and therefore must be strictly construed." *Gibellini v. Klindt*, 110 Nev. 1201, 1205, 885 P.2d 540, 543 (1994). When interpreting a statute, we will first look to the plain language of the statute. *A.F. Const. Co. v. Virgin River Casino Corp.*, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002).

LVMPD filed its memorandum of costs roughly nineteen weeks after the district court filed its summary judgment order. However, at the hearing regarding Gonzalez's motion to retax costs, Gonzalez admitted that there were settlement discussions following the district court's entry of judgment. Further, Gonzalez stated that after this initial discussion, the next settlement conference was not scheduled for another two to four months. LVMPD stated that it remained open to settlement during that entire time. The district court ruled that it was within its discretion to consider the memorandum filed after the five-day deadline because the settlement discussions between the parties provided a good cause basis for the late filing.

NRS 18.110(1) provides that the prevailing party must serve a memorandum of costs on the adverse party "within 5 days after the entry of judgment, or such further time as the court or judge may grant." The district court has discretion to consider an untimely memorandum of costs.

Eberle v. State ex rel. Nell J. Redfield Trust, 108 Nev. 587, 590, 836 P.2d 67, 69 (1992). In *Eberle*, the district court considered the respondent's memorandum of costs, which the appellant argued was untimely. *Id.* at 589, 836 P.2d at 69. This court held that the district court had discretion to consider an untimely motion and by considering respondent's motion, "the district court either considered the motion to be timely, or impliedly granted respondents additional time within which to move for . . . costs." *Id.* at 590, 836 P.2d at 69. Thus, the district court had the discretion to consider an untimely memorandum of costs. *Id.* (noting that the district court's decision to reach the merits of an untimely motion for costs will not be disturbed on appeal).

We conclude that the district court did not abuse its discretion by considering LVMPD's memorandum. The plain language of NRS 18.110(1) grants the district court discretion to consider a memorandum of costs filed outside the statutory time frame. Based on our holding in *Eberle*, here the district court was within its discretion to consider LVMPD's untimely memorandum. Further, the district court stated in its findings that it considered the untimely memorandum because the parties were still engaged in settlement discussions after the district court filed its judgment. Therefore, we conclude that the district court did not abuse its discretion when it considered LVMPD's memorandum of costs pursuant to NRS 18.110.

The district court did not abuse its discretion by finding that NRS 18.110 is not jurisdictional

Gonzalez argues that the district court incorrectly concluded that NRS 18.110(1) is not jurisdictional.¹ Gonzalez further asks this court

¹Specifically, Gonzalez argues that *Linville v. Scheeline*, 30 Nev. 106, 111, 93 P. 225, 227 (1908), and *State ex rel. Cohn v. First Judicial* continued on next page . . .

to overturn its holding in *Eberle* and conclude that NRS 18.110(1) is jurisdictional. We disagree and decline to overturn *Eberle*.²

This court has held that the time deadline provided by NRS 18.110(1) is not a jurisdictional requirement. *Eberle*, 108 Nev. at 590, 836 P.2d at 69; *see also Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005) (citing *Eberle*, 108 Nev. at 590, 836 P.2d at 69, and holding that the five-day deadline is not jurisdictional). Even though the deadline is not jurisdictional, a district court can use its discretion to decide that a party waived their right to file by not filing the memorandum of costs within the required deadline. *Linville v. Scheeline*, 30 Nev. 106, 111, 93 P. 225, 227 (1908); *see also Valladares*, 110 Nev. at 1293-94, 885 P.2d at 582 (holding that the district court did not abuse its discretion when it denied a party's memorandum of costs where the party's lack of diligence caused the memorandum to be untimely). However, the district court is not required to do so. *Valladares*, 110 Nev. at 1293-94, 885 P.2d at 582.

We conclude that the district court properly found that the five-day deadline in NRS 18.110(1) is not jurisdictional. *See Eberle*, 108 Nev. at 590, 836 P.2d at 69. Gonzalez's reliance on *Linville* and *State ex*

... continued

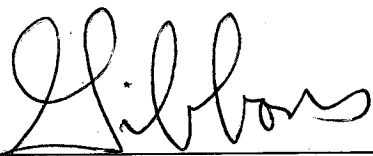
Dist. of Nevada, 26 Nev. 253, 258, 66 P. 743, 744 (1901), support his position. He contends that this court interpreted a prior version of NRS 18.110 and held that the memorandum must be filed within the time limit or be considered waived.


²This court will not overturn precedent "absent compelling reasons for so doing." *Armenta-Carpio v. State*, 129 Nev. ___, ___, 306 P.3d 395, 398 (2013). We conclude that Gonzalez has not provided any compelling reasons for overturning *Eberle*.

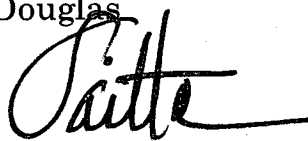
rel. Cohn is misplaced because those cases do not expressly hold that the deadline is jurisdictional. Instead, this court explained in those cases that if a party neglects to file a memorandum of costs within the prescribed time period, the district court has the discretion to find that the party waived their right to costs. This is consistent with our holding in *Eberle*, where we determined that unless a district court finds a reason to extend the five-day deadline, the prevailing party will have waived its right to costs for failing to file within the time prescribed.

Therefore, we conclude that the district court had the discretion to consider LVMPD's memorandum, even nineteen weeks after the five-day deadline because the district court found that the parties were engaged in settlement discussions that justified the untimely filing. Thus, the district court did not abuse its discretion when it (1) found that NRS 18.110(1) is not jurisdictional, and (2) considered LVMPD's memorandum of costs.

Accordingly, we ORDER the judgment of the district court AFFIRMED.³


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

³We have considered the parties' remaining arguments and conclude they are without merit.

cc: Hon. Timothy C. Williams, District Judge
Parker Scheer Lagomarsino
Marquis Aurbach Coffing
Eighth District Court Clerk