

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DICHIARO,
Appellant,
vs.
ROSS GOODMAN, AN INDIVIDUAL,
Respondent.

No. 62697

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER DISMISSING APPEAL


On October 1, 2013, this court entered an order granting appellant's motion for a second extension of time to file the opening brief, allowing appellant until October 4, 2013, to file and serve the brief, and warning that no further extensions of time would be granted absent extreme and unforeseeable circumstances and that counsel's caseload would not be deemed such a circumstance. On October 11, 2013, appellant filed an untimely motion requesting a third extension of time to file the opening brief, arguing that the due date for the opening brief should be extended to October 18, 2013, because the parties were "engaged in settlement discussions during a deposition in a related case," and appellant "believed that this matter may resolve in the next few days, and that the potential resolution would be global in nature and would obviate the need for further briefing in this matter." Appellant also pointed to his counsel's caseload in asking for more time, but he did not explain why he did not request more time before the October 4 deadline expired.

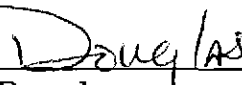
On October 14, 2013, respondent opposed the motion, arguing that the motion was untimely under NRAP 31(b)(3) (providing that "[a] motion for extension of time for filing a brief may be made no later than the due date for the brief"), and that the motion violated this court's October 1 order mandating that no further extensions would be granted

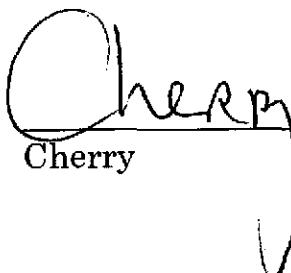
absent extreme and unforeseeable circumstances. Respondent requests that the appeal be dismissed noting that appellant has had over five months to prepare the opening brief and arguing that appellant's claim that he was confident that a settlement discussion in a different case would resolve this case was incredible as respondent never suggested, consented, or insinuated that any discussion that occurred during the deposition in the other case would have in any way operated to stay the briefing schedule in this appeal. Appellant did not reply to respondent's opposition and request for the appeal's dismissal. Appellant submitted his proposed opening brief for filing on October 22, 2013, two days after the deadline that he requested in his third motion for an extension of time.

Having considered the parties' arguments, we deny appellant's motion for an extension of time and grant respondent's request for dismissal. NRAP 31(b)(3); NRAP 31(d) (providing that an appeal may be dismissed if an appellant fails to file an opening brief or appendix within the time provided by NRAP 31 or within an extended time period). Accordingly, we

ORDER this appeal DISMISSED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

¹The clerk of this court shall return, unfiled the appendix and opening brief provisionally received in this court on October 21 and 22, 2013, respectively.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Hitzke & Associates
Law Offices of Ronald Richards & Associates, A.P.C.
Palazzo Law Firm
Eighth District Court Clerk