

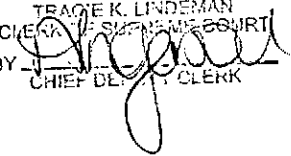
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,
Appellant,
vs.
ATTORNEY SCOTT EDWARDS; AND
ATTORNEY ROBERT C. BELL,
Respondents.

No. 68567

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying NRCP 60(b) relief in a legal malpractice action.¹ Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Appellant John Francis Arpino sued respondents Scott Edwards and Robert C. Bell, asserting a claim for “gross negligence[] to equal legal malpractice,” but the district court dismissed Arpino’s case

¹Although not identified as being challenged in his notice of appeal, Arpino’s appeal statement suggests he also challenges the district court’s order dismissing his complaint. But even assuming that order is properly before us under *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581-82, 245 P.3d 1190, 1192-93 (2010) (setting forth the requirements for a motion to qualify as an NRAP 4(a)(4)(C) tolling motion), Arpino makes no arguments regarding the grounds on which the district court dismissed his complaint, and thus, he has waived any such arguments. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (holding that issues not raised on appeal are deemed waived). And to the extent he seeks relief from the dismissal order based on the arguments advanced in his NRCP 60(b) motion, those arguments fail for the reasons set forth below.

pursuant to NRCP 12(b)(5). In response, Arpino moved for relief from that judgment pursuant to NRCP 60(b)(3), repeating an argument that he presented on several occasions before the district court. Specifically, Arpino asserted that the Washoe County District Attorney did not sufficiently fulfill certain bond requirements set forth in Chapters 252 and 282 of the Nevada Revised Statutes, and, therefore, the deputy district attorney assigned by the Washoe County District Attorney's office to represent Edwards and Bell lacked authority to do so.

In evaluating Arpino's motion, the district court rejected his argument that the district attorney did not comply with the bond requirements, relying on *Arpino v. State*, Docket No. 65907 (Order Denying Petition, July 23, 2014), a decision in which the Nevada Supreme Court concluded that Arpino's argument regarding the district attorney's bond was brought for the purpose of harassing his opponents, and that Arpino had provided no evidence to support his claim and would likely be unable to do so in the future. The district court also found that Arpino's follow-on argument that the deputy district attorney did not have authority to represent Edwards and Bell lacked merit because Nevada law does not require a deputy district attorney to post a bond. As such, the district court denied Arpino's motion and this appeal followed.

On appeal, Arpino contends that the district court improperly denied his motion for NRCP 60(b)(3) relief because the deputy district attorney lacked authority to represent Edwards and Bell. But with the exception of NRS 252.070(2), which authorizes a district attorney to require a deputy district attorney to post a bond, our research has revealed no Nevada law requiring a deputy district attorney to post a bond in order to exercise his or her duties. And here, Arpino has neither

asserted nor presented evidence demonstrating that the district attorney mandated that the deputy district attorney at issue in this matter post a bond.

Instead, Arpino's argument that the deputy district attorney lacked authority to represent Edwards and Bell is based solely on his assertion that the district attorney did not comply with the bond requirements. As a result, the success of Arpino's challenge to the deputy district attorney's authority turns on the success of his argument regarding the district attorney's compliance with the bond requirements.


As stated above, the district court relied on the Nevada Supreme Court's denial of a writ petition Arpino filed related to the district attorney's alleged failure to comply with the bond requirements to reject his underlying arguments regarding the district attorney's purported failure to comply with this requirement. But on appeal, Arpino makes no arguments challenging the district court's reliance on the supreme court's denial of his writ petition in making this determination. As a result, any challenge to the district court's reliance on that order in making this determination has been waived, and we necessarily conclude that its rejection of Arpino's argument on this basis was proper. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011). And because Arpino's arguments regarding the deputy district attorney's authority to represent respondents is based solely on the district attorney's alleged non-compliance with the bond requirements, this argument likewise necessarily fails.²

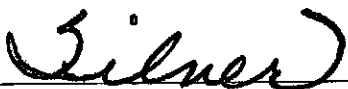
²Given our conclusion, we need not reach Arpino's remaining arguments on appeal.

Accordingly, for the reasons set forth above, we affirm the district court's order denying Arpino's motion for relief under NRCF 60(b)(3).

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
John Francis Arpino
Washoe County District Attorney
Washoe County District Attorney/Civil Division
Washoe District Court Clerk

³On October 6, 2015, Arpino filed a document entitled "Formal Protest / Judicial Notice," and on November 16, 2015, Arpino filed a document entitled "Judicial Notice / Formal Protest." We have reviewed both filings and conclude that the arguments contained within them lack merit, and thus, we deny any relief requested in these filings.