

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GORDON GRAVELLE, O/A CODEPRO
MANUFACTURING,
Appellant,
vs.
HILTON ENGLISH & ASSOCIATES;
CORY HILTON; GARY BURNETT;
JEFFREY J. WHITEHEAD; AND
JEFFREY J. WHITEHEAD, LTD., A/K/A
WHITEHEAD LAW OFFICES,
Respondents.

No. 69129

FILED

AUG 22 2016

TRACIE K. LAIDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a legal malpractice action pursuant to NRCP 41(e). Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Gordon Gravelle filed the underlying action against respondents Hilton English & Associates, Cory Hilton, Gary Burnett, Jeffrey J. Whitehead, and Jeffrey J. Whitehead, Ltd. In lieu of filing responsive pleadings, respondents each demanded nonresident cost bonds from Gravelle. See NRS 18.130(1) (permitting a defendant to require a nonresident plaintiff to post security for costs). Gravelle then moved to proceed in forma pauperis, arguing that such status would entitle him to relief from respondents' demands for cost bonds. The district court granted Gravelle's motion to proceed in forma pauperis, but denied him relief from the NRS 18.130 security requirement.

Gravelle later moved for entry of default judgments against respondents, arguing that the underlying proceeding was not subject to a stay and that respondents failed to answer the complaint. The district court denied that motion, however, based on procedural defects.

Eventually, after notice to the parties and a hearing, the district court dismissed Gravelle's case, over his opposition, under NRCP 41(e). This appeal followed.


On appeal, Gravelle challenges several of the district court's interlocutory orders, but he fails to present, and thereby waives, any argument with regard to the district court's decision to dismiss his action under NRCP 41(e).¹ See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that arguments not raised on appeal are deemed waived). Under these circumstances, we are constrained to conclude that the district court properly dismissed Gravelle's action under NRCP 41(e), as it did not go to trial within five years of its filing.² See NRCP 41(e) (providing that the district court shall dismiss an action not brought to trial within five years of its filing); see also *Morgan v. Las Vegas Sands, Inc.*, 118 Nev. 315, 320, 43 P.3d 1036,

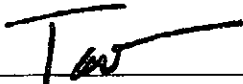
¹We note that NRS 18.130(1) provides that all proceedings in an action are stayed until appropriate security is provided upon a defendant's timely demand for a nonresident cost bond, and a stay of proceedings generally tolls the running of NRCP 41(e)'s five-year period. See *Edwards v. Ghandour*, 123 Nev. 105, 112, 159 P.3d 1086, 1091 (2007) (discussing the circumstances in which a stay tolls the NRCP 41(e) five-year period), *overruled in part on other grounds by Five Star Capital Corp v. Ruby*, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (2008). But on appeal, not only does Gravelle fail to address the propriety of the district court's dismissal of his case pursuant to NRCP 41(e), but he also argues that it is "the law of the case" that the underlying proceeding was never subject to a stay. Thus, as Gravelle has conceded this point, we do not consider the impact of NRS 18.130(1)'s stay provision on the propriety of the district court's dismissal of his case.

²Because we affirm the district court's dismissal of Gravelle's case under NRCP 41(e), we need not address his remaining arguments.

1039 (2002) (recognizing that the language of NRCP 41(e) is mandatory and that the district court generally must dismiss an action that has not been brought to trial within the NRCP 41(e) five-year period). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Mark R. Denton, District Judge
Gordon Gravelle
Law Office of Cory J. Hilton
Whitehead & Burnett
Eighth District Court Clerk