

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ENGLER,
Appellant,
vs.
JOHN B. FISHER D/B/A RE/MAX
REALTY AFFILIATES,
Respondent.¹

No. 69546

FILED

SEP 27 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a breach of contract and fraud action. First Judicial District Court, Carson City; James E. Wilson, Judge.

Respondent moved to dismiss the underlying action under NRCP 16.1(e)(2) for failure to timely file a case conference report. Appellant opposed the motion, arguing that it would have been fruitless to file the case conference report earlier and that dismissal was not appropriate because the delay was due, in large part, to respondent's failure to timely cooperate in producing a joint case conference report. Appellant also asserted that the case had been moving forward because some preliminary discovery had already been conducted.

Appellant's arguments presented in opposition to dismissal were directly related to the factors identified in *Arnold v. Kip*, 123 Nev. 410, 415-16, 168 P.3d 1050, 1053 (2007), as those which a district court should consider in deciding whether to dismiss a case under

¹We direct the clerk of the court to conform the caption for this case to the caption on this order.

NRCP 16.1(e)(2). Nevertheless, the district court dismissed the case for failure to timely file the case conference report without making any findings as to appellant's arguments relating to the factors articulated in *Arnold*. In the absence of such findings, we cannot conclude that the district court properly exercised its discretion in dismissing the underlying action.² See *Jitnan v. Oliver*, 127 Nev. 424, 433, 254 P.3d 623, 629 (2011) ("Without an explanation of the reasons or bases for a district court's decision, meaningful appellate review, even a deferential one, is hampered because we are left to mere speculation.").

²To the extent appellant argues that the motion to dismiss should have been denied because it constituted a case-concluding sanction, that argument lacks merit. See *Arnold*, 123 Nev. at 416, 168 P.3d at 1053-54 (providing that the district court need not consider whether dismissal under NRCP 16.1(e)(2) would prevent a plaintiff from pursuing a claim because the statute of limitations had run, as the court's consideration of a motion to dismiss for failure to timely file the case conference report "should address factors that promote the purpose of the rule, rather than factors that focus on the consequences to the plaintiff resulting from his or her failure to comply with the rule"). Additionally, we do not address appellant's arguments, raised for the first time on appeal, that respondent's motion to dismiss should have been denied based on equitable estoppel or laches. 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."). Finally, to the extent respondent argues that exhibits attached to appellant's opposition to the motion to dismiss were inadmissible, the district court did not make any findings as to the admissibility of those exhibits or state whether it had considered the exhibits in reaching its decision. Thus, we do not address respondent's argument in this regard.

Accordingly, we reverse the dismissal and remand this matter to the district court for further proceedings consistent with this order.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Julie Bachman
Alling & Jillson, Ltd.
Carson City Clerk

³In reversing the district court's order on this basis, we make no comment on the merits of the motion to dismiss.

⁴We decline respondent's request for sanctions against appellant based on inadequacies in the opening brief on appeal.