


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,  
Appellant,  
vs.  
DANIEL M. SCHWARTZ, D/B/A THE  
NEVADA STATE TREASURER,  
Respondent.

No. 70654

**FILED**

JAN 30 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying an NRCP 60(b) motion in a mandamus action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant filed a petition for writ of mandamus below, alleging that respondent, the state treasurer, failed to file a bond that satisfied certain statutory requirements. Respondent moved to dismiss, arguing both that appellant lacked standing to bring the petition and that any statutory requirements were satisfied. The district court dismissed the petition on both grounds, over appellant's opposition. Appellant then filed the underlying motion seeking relief from the court's dismissal order under NRCP 60(b). The district court denied the motion and appellant now appeals from that decision.


Having considered appellant's informal brief and the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's motion. *See Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (explaining that the district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion and


that this court will not disturb that decision absent an abuse of discretion). Indeed, appellant's motion below and informal brief on appeal fail to demonstrate any bases upon which the district court could have relieved appellant from the dismissal of his writ petition. *See* NRCP 60(b)(1)-(4) (listing the grounds on which a district court may grant a party relief from a prior judgment).

And to the extent appellant reiterates the assertions regarding the merits of the district court's dismissal of his petition set forth in his NRCP 60(b) motion, while such arguments do not constitute a proper basis for granting NRCP 60(b) relief, we nonetheless note that the dismissal of this petition was proper as appellant failed to demonstrate standing to bring the petition. *See Heller v. Nev. State Legislature*, 120 Nev. 456, 460-61, 93 P.3d 746, 749 (2004) (requiring standing for mandamus actions and concluding that, if a petitioner will neither gain a direct benefit if the writ is granted nor suffer a direct detriment if it is denied, then the petitioner lacks standing and the writ must be denied); *see also Ruiz v. City of N. Las Vegas*, 127 Nev. 254, 259, 255 P.3d 216, 219 (2011) ("Whether standing exists is a question of law subject to [the appellate courts'] de novo review."). Indeed, while appellant asserted below that he had standing due to being a Nevada citizen and owning property in the state, he failed to explain how the grant or denial of his writ would be to his benefit or detriment. *See Heller*, 120 Nev. at 460-61, 93 P.3d at 749. He further failed to even address standing in his informal brief and therefore waived the issue on appeal. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that an argument not raised in an opening brief is deemed waived); *see also* NRAP 28(e)(2)

(prohibiting parties from incorporating by reference on appeal arguments that were presented to the district court). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James Todd Russell, District Judge  
John Francis Arpino  
Attorney General/Carson City  
Carson City Clerk

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<sup>1</sup>Based on our decision herein, we need not address appellant's arguments regarding the bond requirements.