

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KARLTON T. GARDNER,
Appellant,
vs.

THE STATE OF NEVADA; THE
NEVADA DEPARTMENT OF
CORRECTIONS (NDOC); JAMES G.
COX, DIRECTOR OF THE NDOC;
DWIGHT W. NEVEN, WARDEN OF
HDSP; JAY BARTH, CORRECTIONAL
SGT AT HDSP; TERELL GREGORY,
CORRECTIONAL SR, AT HDSP; AND
CHAD SMITH, CASEWORKER AT
HDSP,
Respondents.

No. 69382

FILED

DEC 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yama
DEPUTY CLERK

ORDER OF AFFIRMANCE

Karlton T. Gardner appeals from a district court's order dismissing his complaint for failure to comply with NRCP 16.1. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

On appeal, Gardner asserts the district court abused its discretion by dismissing his case without prejudice because he failed to schedule and conduct an early case conference within the timeframe established by NRCP 16.1(e)(1) (2005)¹. We disagree.

¹The Nevada Supreme Court amended NRCP 16.1 after the district court order at issue here. *In Re: Proposed Amendments to NRCP 16.1, 16.1(b)(1) and 16.1(e)(1) and (2)*, ADKT 0511 (Order Amending Nevada Rules of Civil Procedure Rule 16.1 and Supplement to Drafter's Note, May
continued on next page . . .

This court reviews a district court's order granting a motion to dismiss for failure to comply with NRCP 16.1(e) for an abuse of discretion. See *Dornbach v. Tenth Judicial Dist. Court*, 130 Nev. , , 324 P.3d 369, 373 (2014). Accordingly, this court will reverse a district court's order dismissing a case under NRCP 16.1(e) only if that court "arbitrarily or capriciously exercise[d] its discretion[.]" *Id.* at _ , 324 P.3d at 373.

First, Gardner argues that in its order, the district court did not properly consider several of the factors articulated in *Arnold v. Kip*, 123 Nev. 410, 168 P.3d 1050 (2007). The list of factors described in *Arnold* is "nonexhaustive" and a district court's review of a motion to dismiss under NRCP 16.1(e) is neither bound by nor limited to those factors, let alone a subset of them. See *Dornbach*, 130 Nev. at , 324 P.3d at 373 (quoting *Arnold*, 123 Nev. at 415, 168 P.3d at 1053). Further, Gardner's contention that it would be futile to hold an early case conference without giving respondents an opportunity to review the exhibits he inadvertently omitted from his first amended complaint is meritless. Gardner admitted in his motion to supplement his first amended complaint that respondents previously possessed those exhibits, so they did have an opportunity to review them.²

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6, 2016). Additionally, although the district court cited the incorrect subsection in its order—NRCP 16.1(e)(3) and not 16.1(e)(1)—such error may only have been typographical and is of no effect as the court stated and applied the substance of the correct subsection in the order.

²At oral argument, Gardner contended that he filed a case conference report within the 240-day window and so he satisfied the requirements of NRCP 16.1. However, the joint case conference report

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Second, Gardner argues that compelling and extraordinary circumstances warranted extending the deadline to hold an early case conference. The district court considered the circumstances Gardner now argues on appeal and concluded that Gardner had not shown that they were “compelling and extraordinary” such that they supported an extension. See NRCP 16.1(e)(1) (2005). Gardner does not identify any errors in the district court’s conclusion on this point, but rather relies upon the procedural facts of the case to demonstrate that he generally complied with court rules. Yet, Gardner does not explain why his compliance with such rules is a dispositive circumstance in reviewing the district court’s decision regarding whether to dismiss the action.

Gardner’s recitation of the facts of his case, without more, does not demonstrate the district court abused its discretion.³ See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38

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must be filed *jointly* with the agreement of both parties. NRCP 16.1(c). If the parties cannot agree on the contents of that report, then each party may submit its own case conference report. *Id.* Still, either kind of case conference report is predicated upon a completed case conference. *Id.* Here, Gardner filed a case conference report apparently in response to the respondents’ motion to dismiss for failure to hold an early case conference per NRCP 16.1. Accordingly, no case conference took place which Gardner could predicate his “case conference report” on. Thus, we conclude Gardner’s timely filing of what he calls a “case conference report” cannot ameliorate his failure to hold a case conference at all.

³We have carefully considered Gardner’s other arguments and conclude that they are unpersuasive.

(2006) (noting that an appellate court need not consider claims that are not supported with relevant authority). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joseph Hardy, Jr., District Judge
Holley Driggs Walch Fine Wray Puzey & Thompson
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