

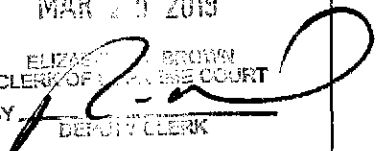
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN KINFORD,
Appellant,
vs.
JAMES PINCOCK,
Respondent.

No. 76703-COA

FILED

MAR 25 2019

ELIZABETH BROWN
CLERK OF THE COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Kinford appeals from a district court order dismissing a complaint. First Judicial District Court, Carson City; James Todd Russell, Judge.


Kinford, an inmate, filed a complaint against respondent, Dr. James Pincock, alleging that Pincock mishandled a surgery to remove hardware from Kinford's face and that, as a result, and because hardware was left in his face, he now suffers mentally, his quality of life has been diminished, and he has lost privileges in prison. Pincock moved to quash service and to dismiss the complaint due to the failure to attach a medical expert affidavit, the expiration of the statute of limitations, and claim preclusion. Kinford failed to oppose the motion and it was granted on all bases. This appeal followed.

On appeal, Kinford argues that the district court erred in determining that this was a medical malpractice or negligence action, such that a medical expert affidavit was required by NRS 41A.071. Kinford asserts that the case is about his mental anguish rather than medical malpractice or negligence. But this argument fails because all of Kinford's alleged injuries stem from the purportedly mishandled surgery and Pincock's decision to leave hardware in Kinford's face, such that the facts

underlying the claim involve medical treatment or judgment and therefore, Kinford's claims are for medical malpractice or negligence, which require a medical expert affidavit per NRS 41A.071. See *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. ___, ___, 408 P.3d 1280, 1288 (2017) ("A claim is grounded in medical malpractice and must adhere to NRS 41A.071 where the facts underlying the claim involve medical diagnosis, treatment, or judgment and the standards of care pertaining to the medical issue require explanation to the jury from a medical expert at trial."). Therefore, dismissal due to Kinford's failure to attach the requisite medical affidavit was proper and we affirm that decision. See *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) ("A complaint that does not comply with NRS 41A.071 is void and must be dismissed . . .").

Additionally, Kinford has failed to raise any arguments challenging dismissal due to the expiration of the statute of limitations or claim preclusion and raises no arguments regarding the quashing of service. As such, he has waived any such arguments and we therefore, also affirm the district court's order as to these issues. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived).

It is so ORDERED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Steven Kinford
Lemons, Grundy & Eisenberg
Carson City Clerk