

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TORREMOLINOS FAMILY TRUST, BY
AND THROUGH ITS TRUSTEE,
RICARDO FOJAS; AND RICARDO
FOJAS, INDIVIDUALLY,
Appellants,
vs.
JP MORGAN CHASE BANK, N.A.; AND
RIO VISTA HOMEOWNERS
ASSOCIATION,
Respondents.

No. 74850-COA

FILED

APR 24 2019

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

ORDER OF AFFIRMANCE

Torremolinos Family Trust¹ appeals from a district court order dismissing its complaint and denying NRCP 60(b) relief in a real property action. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.²

The Torremolinos Family Trust (Torremolinos) brought suit against JP Morgan Chase Bank regarding property it bought in an HOA

¹Ricardo Fojas was not a party individually below and his informal request to be added as a party was never granted. NRAP 3A(a) requires that an appellant be both a party below and be aggrieved. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (holding that “unless [the appellant] has been served with process, appeared in the court below *and* has been named as a party of record in the trial court[,]” it is not a party under NRAP 3A(a) and cannot appeal). Therefore, Fojas lacks standing to appeal the district court order in his individual capacity, and we dismiss the appeal as to him.

²District Judge Richard F. Scotti conducted the hearing and made the rulings and order from the bench. Senior Judge Joseph T. Bonaventure signed the written order.

foreclosure sale.³ Chase moved to dismiss on the ground of claim preclusion, contending that it was already granted summary judgment against the property's co-owner in an earlier suit that alleged the same claims. Torremolinos filed an opposition to Chase's motion to dismiss, but before the hearing on the motion, Torremolinos' counsel moved to withdraw as counsel on an order shortening time. Torremolinos' counsel provided the district court with an affidavit explaining that his employment at a new firm was the reason for withdrawal, that Torremolinos had consented to the withdrawal, and that he was moving to withdraw on an order shortening time because the motion to dismiss hearing was scheduled for the near future. The district court granted Torremolinos' counsel's motion to withdraw and continued the motion to dismiss hearing 35 days from the originally-scheduled date.⁴

At the hearing on the motion to dismiss, the Torremolinos trust was unrepresented by counsel, and the district court therefore prohibited the trustee from arguing on the trust's behalf. Chase was represented by counsel, who argued the motion. Following the hearing, the district court granted Chase's motion to dismiss on the ground of claim preclusion.

Torremolinos appeals the district court's order granting Chase's motion to dismiss and denying Torremolinos' motion for relief under NRCP 60(b). Torremolinos does not challenge the applicability of claim preclusion on which the district court granted the dismissal, nor does it challenge the denial of NRCP 60(b) relief, but instead argues that (1) the district court

³We do not recount the facts except as necessary to our disposition.

⁴This was the second continuance Torremolinos received based on a change of counsel. The original motion to dismiss was filed on June 15, 2017.

abused its discretion in allowing Torremolinos' attorney to withdraw without adequate time for it to obtain new counsel before proceeding with the hearing, and (2) the district court violated its due process rights by prohibiting it from being heard at the hearing when it was unrepresented by counsel.⁵ We disagree.

This court reviews an order granting a motion to withdraw as counsel for an abuse of discretion. *See Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). Because Torremolinos failed to object to the withdrawal of its counsel below, however, that argument is waived on appeal. *See Landmark Hotel & Casino, Inc. v. Moore*, 104 Nev. 297, 299, 757 P.2d 361, 362 (1988) (“[F]ailure to object to a ruling or order of the court results in waiver of the objection and such objection may not be considered on appeal.”). Nevertheless, this court may review an issue for plain error “even in the absence of an objection below if it is so substantial as to result in a miscarriage of justice.” *Id.* When determining whether a lower court plainly erred, this court will consider the error “plain if [it] is so unmistakable that it reveals itself by a casual inspection of the record.” *See*

⁵As Torremolinos does not argue on appeal the propriety of the denial of relief under NRCP 60(b), that contention is waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Torremolinos also contends that the district court abused its discretion by granting the withdrawal because (1) employment at a new firm is not good cause for withdrawal of counsel, and (2) the quick resolution of a motion to withdraw before a hearing is not good cause for an order shortening time. Because Torremolinos fails to cite any authority supporting these arguments, we do not consider them. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that an appellate court need not consider contentions that are not cogently argued or supported by relevant authority).

Torres v. Farmers Ins. Exch., 106 Nev. 340, 345 n.2, 793 P.2d 839, 842 n.2 (1990) (internal quotation marks omitted).

An attorney may withdraw as counsel of record at the discretion of the court upon a showing of good cause and with reasonable notice to the client. *See* RPC 1.16; EDCR 7.40(b). However, “[n]o application for withdrawal or substitution [of counsel] may be granted if a delay of the trial or of the hearing of any other matter in the case would result.” EDCR 7.40(c). Here, Torremolinos contends that the district court should not have granted the withdrawal of counsel because there was not sufficient time for it to acquire new counsel without delaying the hearing on Chase’s motion to dismiss. Torremolinos argues that the district court’s continuance of the hearing so that Torremolinos could obtain new counsel proves that granting the withdrawal delayed the hearing.

Arguably, the district court erred by granting the motion to withdraw while also simultaneously delaying the hearing. *Cf. Logan v. Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141-42 (2015) (noting that this court interprets unambiguous court rules by their plain meaning). Nevertheless, because Torremolinos does not argue or demonstrate that the district court erred in applying claim preclusion to dismiss its complaint below, it has failed to show that this potential error caused a miscarriage of justice. Thus, even if we consider Torremolinos’ challenge to the order granting withdrawal of counsel, which it consented to below, the district court’s order does not constitute plain error.

Torremolinos also contends that the district court abused its discretion either by granting the motion to withdraw as counsel or by not further continuing the hearing until it acquired new counsel, because it was not allowed to argue on its own behalf at the hearing on Chase’s motion to

dismiss.⁶ Torremolinos argues that in order for it to have been “heard” and its due process rights satisfied, it must have been allowed to speak at the hearing. Additionally, Torremolinos contends, without providing a basis for its contention, that the outcome of the hearing would have been different were it represented by counsel and able to present its oral argument because the district court changed its mind on granting the dismissal after Chase presented its oral argument.⁷

“This court applies a de novo standard of review to constitutional challenges.” *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007). As an initial matter, Torremolinos cited no authority that the district court must continue a hearing if one party lacks counsel and only the other party is allowed to argue; therefore, we need not consider that argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (noting that an appellate court need not consider contentions that are not cogently argued or supported by relevant authority). Further, the district court reset the hearing on Chase’s motion to dismiss for 43 days after the motion to withdraw was granted so that Torremolinos could retain new

⁶The district court could prohibit Torremolinos from arguing at the hearing as it was an entity without counsel. *See Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000) (holding that a trustee cannot represent a trust because “a trust must be represented by a licensed attorney in Nevada state courts.”).

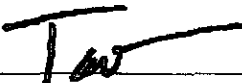
⁷Torremolinos failed to include the hearing transcript in the record. Therefore, this court presumes that the missing transcript supports the district court’s decision and this argument fails on this additional basis. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (“When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.”).

counsel, and our review of the record shows that, notwithstanding Torremolinos' lack of representation at that hearing, the district court considered Torremolinos' written opposition before granting the dismissal. See *J.D. Constr., Inc. v. IBEX Int'l Grp., LLC*, 126 Nev. 366, 377, 240 P.3d 1033, 1041 (2010) ("Due process is satisfied where interested parties are given an 'opportunity to be heard at a meaningful time and in a meaningful manner.'" (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976))); *Callie*, 123 Nev. at 183, 160 P.3d at 879 ("[P]rocedural due process 'requires notice and an opportunity to be heard.'" (quoting *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004))).

Therefore, we conclude the district court did not abuse its discretion in granting Torremolinos' counsel's motion to withdraw, even though it delayed the hearing, and Torremolinos had not retained new representation by the time of the hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph T. Bonaventure, Senior Judge
Hon. Richard F. Scotti, District Judge
Law Office of David Ortiz
Boyack Orme & Anthony
Smith Larsen & Wixom
Eighth District Court Clerk