

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IVO TOMAN, AN INDIVIDUAL,
Appellant,
vs.
NEVADA TRANSPORTATION
AUTHORITY, A DIVISION OF THE
STATE OF NEVADA DEPARTMENT
OF BUSINESS AND INDUSTRY, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA,
Respondent.

No. 77156-COA

FILED

NOV 27 2019

ELIZABETH J. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ivo Toman appeals a district court order dismissing a petition for judicial review. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

In the proceedings below, respondent Nevada Transportation Authority (NTA) cited Toman for a violation of NAC 706.3747, which requires taxicab drivers to complete trip sheets during their shifts. Following a hearing, Toman was found to have violated the rule and a \$500 fine was imposed against him. Toman timely filed a petition for judicial review, but did not file a memorandum of points and authorities with the petition. The NTA then moved to dismiss on the basis that Toman failed to timely file his memorandum of points and authorities pursuant to NRS 233B.133(1). Toman opposed the motion to dismiss and filed a motion to extend time to file the memorandum of points and authorities. The district

court dismissed Toman's petition for judicial review based on his failure to timely file his memorandum of points and authorities, finding that Toman failed to show good cause for his untimely filing and denied his motion to extend time as moot. This appeal followed.

On appeal, Toman challenges the dismissal of his petition for judicial review and the denial of his motion to extend time. Pursuant to NRS 233.133(1), a petitioner seeking judicial review of an administrative decision must file his memorandum of points and authorities within 40 days after the agency gives written notice that the record of the proceeding has been filed with the court. However, pursuant to NRS 233.133(6), the district court may extend this time for good cause. We review a district court's decision whether to do so for an abuse of discretion. *See Spar Bus. Servs., Inc. v. Olson*, 135 Nev., Adv. Op. 40, 448 P.3d 539, 542 (2019) (comparing the good-cause analysis under NRS 233B.130(5) to NRS 233B.133(6), and recognizing that such analyses are reviewed for an abuse of discretion).

Here, Toman filed his memorandum of points and authorities after the 40-day deadline, but argued that good cause existed for the delay. The district court found that Toman's basis for his delay was unpersuasive and that good cause to extend the time for filing the memorandum of points and authorities did not exist. Based on our review of the record, we cannot conclude the district court abused its discretion in determining that good cause did not exist, and that it therefore improperly dismissed the petition.


While Toman contends that the district court erred in dismissing the petition for judicial review on the basis that it lacked jurisdiction, this argument does not support reversal of the underlying decision. Although it is not clear that the district court actually concluded it lacked jurisdiction, the challenged order does state that strict compliance with the statute is required to give the district court jurisdiction and that noncompliance is grounds for dismissal. To the extent this statement could be construed as concluding the court lacked jurisdiction, Toman is correct that the failure to timely file the memorandum of points and authorities does not deprive the district court of jurisdiction, unlike the failure to timely file a petition for judicial review. *See Fitzpatrick v. State, Dep't of Commerce, Ins. Div.*, 107 Nev. 486, 488-89, 813 P.2d 1004, 1005-06 (1991) (explaining that the time allotted for filing a petition for judicial review is jurisdictional, but filing the memorandum of points and authorities pursuant to NRS 233B.133 is not). Thus, if the district court concluded that compliance with NRS 233B.133 is jurisdictional, such a conclusion would be erroneous. However, because the court ultimately considered and ruled on whether good cause existed to extend the time to file the memorandum of points and authorities, and as noted above, did not abuse its discretion in determining no good cause existed, any such potential error was harmless and does not provide a basis for relief. *See* NRCP 61 (providing that the

court must disregard all errors that do not affect a party's substantial rights).¹

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Law Offices of Steven F. Bus, Ltd.
Attorney General/Las Vegas
Washoe District Court Clerk

¹We similarly conclude that, to the extent the district court erroneously concluded the motion to extend time was moot, rather than denied on the merits, any potential error was likewise harmless because it is clear from the court's findings that it considered whether good cause existed. See NRCP 61.

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.