

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JANICE MARIE WRIGHT; WALTER
MARSHALL, INDIVIDUALLY AND AS
EXECUTORS OF THE ESTATE OF
JAMIE LEE MARSHALL; RONNIE
MARSHALL; AND STEVEN L.
MARSHALL,
Appellants,
vs.
ERIC MOLDESTAD, M.D.,
Respondent.

No. 81345-COA

FILED

JUL 21 2021

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

ORDER OF AFFIRMANCE

The estate of Jamie Lee Marshall, Janice Marie Wright, Walter Marshall, Ronnie Marshall, and Steven L. Marshall (collectively, the Estate) appeal from a district court order granting a motion to dismiss a medical malpractice action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

The Estate filed a complaint on July 7, 2018, against medical doctors Eric Moldestad and Salah Baydoun¹ for death due to neglect of an older person² and medical malpractice.³ Drs. Baydoun and Moldestad filed and served answers to the complaint on November 15 and 16, 2018,

¹Dr. Baydoun was previously a party to this appeal, but the appeal was dismissed as to Dr. Baydoun based on a stipulation following the settlement conference in this matter.

²The district court dismissed this claim below and appellants do not raise issue with it on appeal.

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

respectively. After that, the parties conducted an early case conference on April 5, 2019. On May 15, 2019, the Estate sent Drs. Baydoun and Moldestad a draft joint case conference report (JCCR). Dr. Moldestad responded with corrections to the draft JCCR. When the Estate failed to file a JCCR or an individual case conference report (ICCR), Drs. Baydoun and Moldestad moved to dismiss the complaint pursuant to NRCP 16.1(e)(2) on August 19, 2019. The Estate opposed the motion and filed an ICCR on August 21, 2019. The district court granted Drs. Baydoun and Moldestad's motion to dismiss in light of NRCP 16.1(e)(2) and the relevant factors found in *Arnold v. Kip*, 123 Nev. 410, 415-16, 168 P.3d 1050, 1053 (2007). The Estate then filed a motion to alter or amend the judgment, which the district court denied, finding that no error in law or fact had occurred.

The Estate argues on appeal that the district court abused its discretion by dismissing its case and denying its motion to alter or amend the judgment.⁴ Specifically, it argues that the district court mistakenly found the Estate had the burden to file either a JCCR or an ICCR. It also claims that Dr. Moldestad caused the delay, that the district court failed to properly consider the *Arnold* factors, and that NRCP 16.1(e)(2) is discretionary and not mandatory.

⁴The Estate, however, cites no relevant authority in support of its argument against the district court's decision to deny the motion to alter or amend the judgment. Thus, we decline to consider this argument. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

We review the district court's order granting a motion to dismiss under NRCP 16.1(e)(2) for an abuse of discretion. *Arnold*, 123 Nev. at 414, 168 P.3d at 1052. NRCP 16.1(e)(2) provides a district court with discretion to dismiss a case if a case conference report has not been filed within 240 days after service of an answer by a defendant. In *Arnold*, the Nevada Supreme Court announced a non-exhaustive list of factors for a district court to consider before dismissing a case pursuant to NRCP 16.1(e)(2). Some factors for the district court to consider include "the length of the delay, whether the defendant induced or caused the delay, [and] whether the delay has otherwise impeded the timely prosecution of the case." *Id.* at 415-16, 168 P.3d at 1053.

NRCP 16.1(c)(1)(A) requires the parties to file either a JCCR or an ICCR if the parties cannot agree on the content of a joint report. However, NRCP 16.1(e)(2) controls dismissal. While NRCP 16.1(c)(1)(A) requires the "parties" to file either a JCCR or an ICCR, NRCP 16.1(e)(2) permits a district court the discretion to dismiss a case if the *plaintiff* does not file a case conference report.


We conclude that the district court did not abuse its discretion for several reasons. First, more than 240 days had passed since the service of both Drs. Moldestad's and Baydoun's answers. Second, the district court considered the various *Arnold* factors and made appropriate findings. Third, the district court did not err by finding that Drs. Moldestad and Baydoun did not cause or induce the delay because they communicated with the Estate about drafting the JCCR and the Estate failed to file the JCCR or an ICCR. Finally, the burden to file either a JCCR or an ICCR falls on the plaintiff pursuant to the rule. Therefore, despite the reference to "parties" in NRCP 16.1(c)(1)(A), because the Estate failed to file any case

conference report within the 240-day deadline, the district court was within its discretion to dismiss the case pursuant to NRCP 16.1(e)(2).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Adriana Escobar, District Judge
Patrick N. Chapin, Settlement Judge
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