

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN CHARLES KERZETSKI,
Appellant,
vs.
CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES,
Respondent.

No. 89608-COA

FILED

SEP 09 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brian Charles Kerzetski appeals from a district court order denying his post-judgment motion to amend and for further findings. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

On May 25, 2023, Kerzetski filed a petition for judicial review challenging the February 27, 2023, final agency decision upholding respondent Clark County Department of Family Services' (DFS) finding of substantiation that he had abused his minor stepdaughter. Following DFS's motion to dismiss the petition, the district court entered an order dismissing Kerzetski's petition for judicial review finding it was untimely under NRS 233B.130(2)(d), and that he failed to serve the attorney general as required by NRS 233B.130(2)(c)(1). Kerzetski appealed that decision, and this court affirmed the district court's order. *See Kerzetski v. Clark Cnty. Dep't of Fam. Servs.*, Docket No. 87809-COA, 2025 WL1012713 (Nev. Ct. App. Mar. 28, 2025) (Order of Affirmance), *pet. for reh'g denied*, (Aug. 21, 2025).

While Kerzetski's appeal was pending before the appellate courts, he filed a "motion to amend the court's findings, make additional findings, and amend the order granting Clark County's motion to dismiss

petition for judicial review.” In that filing, and subsequent filings amending that filing, Kerzetski argued that the district court should amend its prior decision and enter an order denying DFS’s motion to dismiss, or striking it from the record. Specifically, Kerzetski repeated arguments from his earlier opposition to the motion to dismiss, including his assertion that a document he mailed to the district court on March 23, 2023—informing the court that he intended to file a petition for judicial review in the future and planned to request an extension of time to do so—that was filed by the Eighth Judicial District Court clerk’s office in his divorce case should be construed as a timely petition for judicial review. Kerzetski argued that, because the clerk’s office labeled his filings as a petition for judicial review, they should be construed as a timely petition under NRS 233B.130(2)(d).

Further, Kerzetski argued that DFS’s motion was procedurally improper and should have been struck from the record. Specifically, Kerzetski argued that the district court should vacate its order granting the motion to dismiss and strike DFS’s motion from the record because (1) DFS failed to timely file a statement of intent to participate within 20 days of service of the petition as required by NRS 233B.130(3); and (2) DFS violated EDCR 2.20(b) by failing to indicate “hearing requested” or “hearing not requested” on the motion, requiring the district court to retroactively strike the motion to cure any deficiency.¹

DFS opposed Kerzetski’s motion, and after full briefing, the district court entered an order denying Kerzetski’s motion to amend and

¹EDCR 2.20(b) requires litigants to include the designation “hearing requested” or “hearing not requested” on all filed motions. “If the motion contains neither designation, the clerk shall strike it after notice and an opportunity to cure is given, as provided in EDCR 8.03.”

request for additional findings. In its order, the district court rejected Kerzetski's argument that his petition for judicial review was filed in March 2023, stating that "the document, claimed by [Kerzetski] to be his Petition[] for Judicial Review, that was mistakenly filed into [his divorce case] was not a Petition for Judicial Review but was a letter of intent to file a Petition for Judicial Review." Accordingly, the court found that there was no basis to amend its order granting the motion to dismiss and reiterated its findings that Kerzetski's petition for judicial review was untimely, meaning that the district court was without jurisdiction to consider his petition. Kerzetski now appeals.

We review a district court's decision to deny a motion to amend or for further findings for an abuse of discretion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (reviewing a district court's denial of a NRCP 59(e) motion for an abuse of discretion); *Brechan v. Scott*, 92 Nev. 633, 634, 555 P.2d 1230, 1230 (1976) (holding that a district court's decision to grant or deny a motion under NRCP 52(b) will not be disturbed when supported by substantial evidence); *Bautista v. Picone*, 134 Nev. 334, 336, 419 P.3d 157, 159 (2018) ("An abuse of discretion occurs when a district court's decision is not supported by substantial evidence or is clearly erroneous."). The "basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, [presenting] newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." *AA Primo*, 126 Nev. at 582, 245 P.3d at 1193 (internal quotation marks and alterations omitted).

On appeal, Kerzetski argues that the district court abused its discretion by making the factual determination that the March 2023 document filed in his divorce case was not a timely petition for judicial

review, by reasserting its earlier finding that his petition for judicial review was untimely, and by failing to specifically address his procedural arguments and strike DFS's motion to dismiss from the record.

We conclude the district court did not abuse its discretion when denying his motion to amend or for further findings as Kerzetski did not demonstrate a manifest error of law or fact, newly discovered or previously unavailable evidence, a change in controlling law, or the need to prevent manifest injustice. Instead, as found by the district court in its order, the record demonstrates that Kerzetski filed a letter of intent to file a petition for judicial review with the Eighth Judicial District Court on or around March 23, 2023, which was filed in his divorce case. However, Kerzetski did not file his petition for judicial review in this matter until May 25, 2023, over 30 days after service of the final administrative agency decision. Thus, the record supports the district court's finding that Kerzetski's petition for judicial review was untimely.

As the district court does not obtain jurisdiction over an appeal from an administrative decision where the petitioner fails to comply with NRS 233B.130(2)(d), *see Washoe Cnty. v. Otto*, 128 Nev. 424, 434-35, 282 P.3d 719, 727 (2012) (holding that the district court never obtains jurisdiction over an appeal from an administrative decision if the petitioner fails to comply with NRS 233B.130(2)(d)) and because our appellate courts do not recognize the doctrine of equitable tolling in this context, *see Seino v. Emp'rs Ins. Co. of Nev.*, 121 Nev. 146, 153, 111 P.3d 1107, 1112 (2005) (noting that "this court . . . has never applied the doctrine of equitable tolling to statutory periods that are mandatory and jurisdictional"), we conclude that dismissal of the petition for judicial review was mandatory.

For this reason, we conclude the district court did not abuse its discretion when denying Kerzetski's motion to amend and for further findings.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Monica Trujillo, District Judge
Brian Charles Kerzetski
Clark County District Attorney/Juvenile Division
Eighth District Court Clerk

²Insofar as Kerzetski raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.