

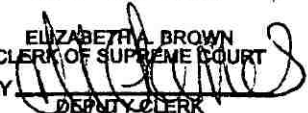
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON BURKHART,  
Appellant,  
vs.  
EMPLOYMENT SECURITY DIVISION,  
STATE OF NEVADA,  
Respondent.

No. 90628-COA

**FILED**

**MAR 30 2026**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jason Burkhart appeals from a district court order dismissing a petition for judicial review in an unemployment matter. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Burkhart was initially found eligible for unemployment benefits but, after he failed to provide requested employer information, was determined to be ineligible and liable for the overpayments. An appeals referee affirmed these determinations and the Board of Review likewise affirmed. Burkhart filed a timely petition for judicial review but failed to timely file an opening brief. Based on this failure, respondent filed a motion to dismiss. Burkhart opposed the motion, but the district court ultimately granted it and dismissed his petition, finding Burkhart's brief was filed late, he had notice of the briefing schedule, and he failed to demonstrate good cause existed to extend the deadline to file his brief.

Burkhart subsequently filed a timely motion to alter or amend the judgment pursuant to NRCP 59, and respondent, the Employment Security Division, did not file an opposition. The district court denied Burkhart's motion, concluding that he failed to demonstrate that relief was warranted. This appeal followed.

On appeal, Burkhart challenges the dismissal of his petition for judicial review. Pursuant to NRS 233B.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 233B.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. 296, 299, 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). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006).

Burkhart argues the district court failed to exercise its discretion in determining whether good cause existed; however, the court's order reflects it did exercise its discretion, just not in Burkhart's favor. Here, Burkhart filed his memorandum of points and authorities after the 40-day deadline but argued that good cause existed for the delay. Before the district court, Burkhard asserted he had good cause as he was a pro se litigant who made diligent efforts to comply but was unaware of the filing date. Burkhart also contended that Nevada favors adjudication of disputes on the merits and that respondent would not be prejudiced by his delay.

The district court found that Burkhart'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 because Burkhart had notice of the briefing schedule and failed to file any requests seeking

clarification on or an extension of the deadlines. Additionally, while Nevada's public policy favors hearing cases on their merits, the Nevada Supreme Court has explained that this policy "is not absolute and must be balanced against [other] countervailing policy considerations," and the district court enjoys discretion to determine which policy considerations favor its findings. *Huckabay Props, v. NC Auto Parts*, 130 Nev. 196, 198, 322 P.3d 429, 430 (2014). Based on our review of the record, we cannot conclude the district court abused its discretion in determining that good cause did not exist, or that it therefore improperly dismissed the petition. *See Spar Bus. Servs.*, 135 Nev. at 299, 448 P.3d at 542; *Fitzpatrick v. State, Dep't of Commerce Ins. Div.*, 107 Nev. 486, 488, 813 P.2d 1004, 1005 (1991) (recognizing that, in the review of agency decisions, the operative statute vests the court with authority to adjust otherwise mandatory timelines).

Next, Burkhart argues the district court erroneously dismissed this matter for lack of jurisdiction. Burkhart accurately notes that his failure to timely file a memorandum of points and authorities did not deprive the district court of jurisdiction in this case. *See Fitzpatrick*, 107 Nev. at 488-89, 813 P.2d at 1005-06 (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). However, while here the district court included citation to authority discussing jurisdictional dismissals of petitions for judicial review, it did not dismiss Burkhart's petition for lack of jurisdiction. Rather, the court determined Burkhart did not have good cause to excuse his delay in filing the memorandum of points and authorities. Even assuming the district court erred by including citation to authority discussing jurisdiction for consideration of petitions for judicial review, any error was harmless in

light of the district court's aforementioned determination that Burkhart did not have good cause to excuse the delay in filing the memorandum of points and authorities. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *see also Toman v. Nev. Transp. Auth.*, No. 77156-COA, 2019 WL 6381880 (Nev. Ct. App. Nov. 27, 2019) (Order of Affirmance) (affirming a district court's decision to dismiss a petition for judicial review due to the failure to timely file points and authorities and explaining that the district court's reference to authorities discussing jurisdiction was harmless).<sup>1</sup>

Burkhart next challenges the district court's denial of his NRCP 59 motion. This court reviews orders denying motions to alter or amend for an abuse of discretion. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 589, 245 P.3d 1190, 1195, 1197 (2010). Among the "basic grounds" for a Rule 59 motion are "correct[ing] manifest errors of law or fact," "newly discovered or previously unavailable evidence," the need "to prevent manifest injustice," or a "change in controlling law." *Id.* at 582, 245

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<sup>1</sup>Burkhart appears to contend that because the deadline provided in NRS 233B.133(1) is not jurisdictional, he was entitled to an extension. However, just because a rule is not jurisdictional does not mean that it is not mandatory. 36 C.J.S. Federal Courts § 8 (2014) ("Calling a rule nonjurisdictional does not mean that it is not mandatory . . ."). NRS 233B.133(1) provides that a petitioner "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, indicating the requirement is mandatory. *See Washoe County v. Otto*, 128 Nev. 424, 430-31, 282 P.3d 719, 724 (2012) ("The word 'must' generally imposes a mandatory requirement.").

P.3d at 1193 (internal quotation marks omitted). We conclude the district court did not abuse its discretion by denying Burkhart's NRCP 59 motion because it properly dismissed his petition for the reasons set forth above, and Burkhart fails to demonstrate any of the grounds necessary to obtain NRCP 59 relief. *See id.* Moreover, we are unpersuaded by Burkhart's contention that respondent's failure to oppose his NRCP 59 motion warrants relief. Under District Court Rule 13(3), the district court has discretion to treat the opposing party's failure to file an opposition as "an admission that the motion is meritorious and a consent to granting the motion," but that rule "does not mandate granting a motion simply because it is unopposed." *See El Cortez Reno Holdings, LLC v. PFPCO.'s Noble Pie Parlor*, 141 Nev., Adv. Op. 68, 581 P.3d 416, 423 (2025). We, therefore,

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge  
Jason Burkhart  
State of Nevada/DETR - Carson City  
Washoe District Court Clerk