

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD W. KAPRAL,  
INDIVIDUALLY, AS HUSBAND, AND  
AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF LENORE KAPRAL,  
DECEASED; CHRISTINE A. BODINE,  
AN INDIVIDUAL HEIR; AND VINCENT  
P. RESZKO, AN INDIVIDUAL HEIR,  
Appellants,

vs.

FRANK JORDAN, M.D. AN  
INDIVIDUAL; BRUCE HIRSCHFELD,  
M.D., AN INDIVIDUAL; AND  
COTTRELL HIRSCHFELD JORDAN  
LLP, A BUSINESS ENTITY,  
Respondents.

No. 69775

FILED

MAY 24 2017

ELIZABETH T. BROWN  
CLERK OF THE COURT  
BY *A. Wilcox*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Richard W. Kapral, Christine A. Bodine, and Vincent P. Resko appeal from an order dismissing their complaint against respondents Frank Jordan, M.D., Bruce Hirschfeld, M.D., and Cottrell Hirschfeld Jordan LLP. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellants (collectively "Kapral") sued respondents (collectively "the vascular defendants") and other healthcare providers for medical malpractice and negligence. The district court later dismissed the action against the vascular defendants for Kapral's failure to hold an early case conference and file a joint case conference report within the deadlines set forth by NRCP 16.1.<sup>1</sup>

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

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On appeal, Kapral argues the district court abused its discretion by denying his motion for an extension of time and by dismissing the complaint without prejudice.<sup>2</sup> We disagree.

We review a district court's decision to sanction noncompliance with dismissal for an abuse of discretion. *Arnold v. Kip*, 123 Nev. 410, 414, 168 P.3d 1050, 1052 (2007). Under NRCP 16.1(e)(1), if the early case conference "is not held within 180 days after service of an answer by a defendant," the court may dismiss that defendant from the case "unless there are compelling and extraordinary circumstances for a continuance beyond this period." Likewise, NRCP 16.1(e)(2) allows the court to dismiss the case against a defendant if the plaintiff fails to file the joint case conference report within 240 days after the defendant's answer. These rules were promulgated to encourage plaintiffs to timely pursue prosecution, and the defendant need not show prejudice to obtain a dismissal. *Arnold*, 123 Nev. at 415, 168 P.3d at 1053. Rather, the district court should "address factors that promote the purpose of the rule, rather


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<sup>2</sup>We decline to consider Kapral's arguments regarding *Moon v. McDonald, Carano & Wilson, LLP*, 126 Nev. 510, 245 P.3d 1138 (2010), as the record demonstrates those arguments are raised for the first time on appeal. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). Moreover, the district court's failure to consider an unarticulated tolling issue is not error that is "so unmistakable that it reveals itself by a casual inspection of the record," and we decline to review it sua sponte. See *Williams v. Zellhoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789 (1973) (defining plain error); *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) (holding that this court will consider relevant issues sua sponte to prevent plain error).

than factors that focus on the consequences to the plaintiff resulting from his or her failure to comply with the rule." *Id.* at 416, 168 P.3d at 1053-54.

Here, Kapral's delay was substantial and the vascular defendants were not responsible for the delay; to the contrary, the vascular defendants twice reminded Kapral of the need to set the early case conference. Kapral does not argue that he could not have timely pursued the case against the vascular defendants. Nor does Kapral's argument that he delayed setting the early case conference because he had not yet received an answer from other defendants excuse his delay with regard to the vascular defendants. Under these facts, the district court did not abuse its discretion by concluding that Kapral did not show compelling and extraordinary grounds to justify extending the NRCP 16.1 deadlines. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

cc: Hon. Linda Marie Bell, District Judge  
M. Nelson Segel, Settlement Judge  
Maloney & Knox, PLLC

Parker & Edwards  
Cohen Johnson Parker Edwards  
John H. Cotton & Associates, Ltd.  
Eighth District Court Clerk