

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RAY MILLER,  
Appellant,

vs.

DEBRA CUTSHAW; SERGEANT RICK  
G. ROSE; MICHAEL BUDGE; AND THE  
STATE OF NEVADA,  
Respondents.

No. 50320

**FILED**

JUN 12 2008

TRAZIE K. LANDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant John Ray Miller filed a district court complaint against respondents, prison officials, on August 8, 2005. After the parties conducted an early case conference on April 21, 2006, nothing occurred in the matter until August 8, 2007, when respondents filed a motion to dismiss under NRCP 41(e) for failure to bring the action to trial within two years. Although Miller opposed the motion, arguing that he was prevented from accessing the courts when his August and September 2006 requests for inmate law clerk assistance were denied, the district court granted the motion and dismissed the case. In its order, the court found that Miller's asserted reliance on inmate assistance did not excuse his

failure to prosecute his case, and the court also determined that Miller had failed to state a claim upon which relief could be granted. Miller has appealed.

The district court has wide discretion to dismiss an action under NRCP 41(e) for want of prosecution within two years, and we will not overturn the court's exercise of that discretion absent gross abuse.<sup>1</sup> In exercising its NRCP 41(e) discretion, the district court may properly consider the action's merits.<sup>2</sup>

In his civil proper person appeal statement, Miller asserts that the district court committed a gross abuse of discretion in dismissing his case under NRCP 41(e)'s two-year provision because Miller lacked the skill or learning to prosecute his case without assistance and because his requests for assistance from the inmate law clerk who originally aided him were denied. Miller also points out that the facility in which he was housed has no law library.

As an inmate, Miller is entitled to meaningful court access, such as through provision of an adequate law library or assistance from a

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<sup>1</sup>Northern Ill. Corp. v. Miller, 78 Nev. 213, 215-16, 370 P.2d 955, 956 (1962).

<sup>2</sup>Id. at 217, 370 P.2d at 956. Although Miller has not specifically addressed on appeal the district court's conclusion that he failed to state a claim upon which relief could be granted, we conclude that the court's conclusion in that regard correctly demonstrated that Miller was unlikely to succeed on the merits of his claims and was appropriately considered in the context of determining whether to dismiss his case under NRCP 41(e).

legally trained person.<sup>3</sup> Barring otherwise inadequate court access, however, nothing entitled Miller to assistance from a particular inmate law clerk.<sup>4</sup> While the response to Miller's first request for assistance directing him to the law librarian for help was not entirely clear, the response to his second request informed him that he could seek assistance from the Nevada State Prison law library.<sup>5</sup> But Miller did not contend that he sought further assistance of any sort or that he asked the district court for an order compelling the assistance of the desired inmate law clerk.<sup>6</sup>

Rule 41(e) requires the plaintiff to diligently pursue his claims.<sup>7</sup> Here, while the district court perhaps could have ruled differently, the record reveals no gross abuse of discretion regarding the

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<sup>3</sup>See, e.g., Bounds v. Smith, 430 U.S. 817, 828 (1977), as clarified in Lewis v. Casey, 518 U.S. 343, 349-54 (1996); Wolff v. McDonnell, 418 U.S. 539, 577-80 (1974) (clarifying that the court access/inmate assistance rights articulated in Johnson v. Avery, 393 U.S. 483 (1969), apply to civil rights actions).

<sup>4</sup>Dooley v. Quick, 598 F. Supp. 607, 620 (D.R.I. 1984).

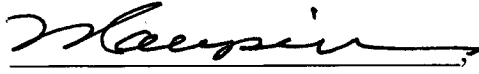
<sup>5</sup>See AR § 722.01(1.10) (2005).

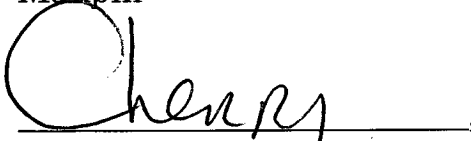
<sup>6</sup>See AR § 722.02(1.3) (2005) ("Inmate law clerks may only assist inmates at the institution where they are so assigned, except by specific order from a judge or magistrate.).

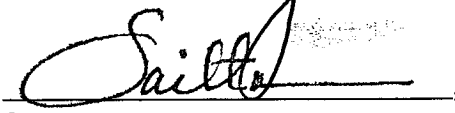
<sup>7</sup>Massey v. Sunrise Hospital, 102 Nev. 367, 369, 724 P.2d 208, 209 (1986).

court's determination that Miller failed to diligently pursue his claims.<sup>8</sup>  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. James Todd Russell, District Judge  
John Ray Miller  
Attorney General Catherine Cortez Masto/Carson City  
Carson City Clerk

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<sup>8</sup>See Northern Ill. Corp., 78 Nev. at 216, 370 P.2d at 956 (discussing People's Home Savings Bank v. Sherman, 90 P. 133 (Cal. 1907)).

Similarly, to the extent that Miller contests the district court's refusal to appoint him counsel, we conclude that the district court did not abuse its discretion. See Rodriguez v. Dist. Ct., 120 Nev. 798, 102 P.3d 41 (2004) (recognizing that there is no right to appointment of counsel in civil cases not involving incarceration for contempt).

<sup>9</sup>Miller's other requests for relief, including that we recognize the existence of two different versions of AR 259, the alleged fact that Miller did not attempt to send money to a bank, and that collusion took place, are denied as moot.