

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,  
Appellant,  
vs.  
CORRECTIONS OFFICER VALESTER;  
CORRECTIONS OFFICER  
DICKERMAN; CORRECTIONS  
OFFICER MULLINS; LOVELOCK  
CORRECTIONAL CENTER; AND  
NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondents.

No. 52610

**FILED**

MAR 27 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY                       
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint for lack of jurisdiction. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

In August 2008, appellant Steven Voss filed a complaint in the district court alleging that respondents had negligently destroyed legal documents belonging to him and seeking relief in the amount of \$6,000. On September 24, 2008, respondents filed a motion to dismiss Voss's complaint arguing that the district court did not have jurisdiction over the matter. Specifically, the motion stated that because the value of the personal property at issue was less than \$10,000, the justice court, and not the district court, had jurisdiction over Voss's action. The district court, in its September 25, 2008, order, dismissed Voss's complaint for lack of jurisdiction. Voss opposed the motion, arguing that he should be allowed to amend the complaint to assert a claim that meets the district court's jurisdictional threshold. Voss's opposition to respondents' motion to dismiss, however, was filed after the court's order dismissing his complaint, on September 29, 2008.

On September 30, 2008, Voss timely submitted a motion for reconsideration of the September 25 order, a motion for leave to amend the complaint, a proposed amended complaint, and a notice of appeal. The district court clerk filed the notice of appeal on October 3, 2008, but did not file Voss's other motions. Respondents' opposition to Voss's motions for reconsideration and for leave to amend the complaint were filed on October 15, 2008. Voss thereafter submitted a reply to respondents' opposition on October 20, 2008. Voss's reply was not filed by the district court clerk. On appeal, Voss challenges the district court's order dismissing his complaint, arguing that it was entered before the district court considered his opposition to respondents' motion to dismiss, in which he asserted that he should be allowed to amend the complaint to correct the jurisdictional defect. Voss also assigns error to the district court clerk's failure to file his motions for reconsideration and for leave to amend.

Having reviewed the record and Voss's arguments, we conclude that if the district court's September 25 order was issued in response to respondents' September 24 motion to dismiss, the court erred when it issued its order before allowing Voss to file an opposition to respondents' motion. The district court clerk also erred in not filing Voss's motions, proposed amended complaint, and reply. Nevertheless, neither of these errors warrant reversal, as the district court properly determined that it does not have jurisdiction over Voss's action.

The district court's failure to allow Voss to oppose respondents' motion

It is unclear from the district court's September 25, 2008, order whether the court's decision to dismiss the complaint was based on respondents' motion to dismiss, filed the day before, or was entered sua sponte, without having considered respondents' motion. Nevertheless,

respondents' September 24, 2008, motion to dismiss set forth the same jurisdictional argument for dismissal and relied on the same statute as did the court's order dismissing Voss's complaint. If the district court's order was issued sua sponte, Voss's argument that the district court erred by dismissing the complaint without allowing him time to file an opposition to respondents' motion is without merit. Royal Ins. v. Eagle Valley Const., Inc., 110 Nev. 119, 867 P.2d 1146 (2994). If, however, the court's order was issued in response to respondents' motion to dismiss, the district court should have allowed Voss to respond to the motion prior to issuing its order of dismissal. See DCR 13(3) (stating that within 10 days after the service of a motion, the opposing party shall file and serve his written opposition). Under such circumstance, the district court's decision to dismiss the action without first allowing Voss time to oppose the motion to dismiss would be error.

The district court's lack of jurisdiction

The negligence complaint filed by Voss alleged that the destroyed legal documents had a monetary value in excess of \$6,000 and sought judgment against respondents in the amount of \$6,000. Under NRS 4.370(1)(b), justice courts have jurisdiction over actions for damage to personal property if the damage claimed does not exceed \$10,000. Because Voss claimed damages in an amount under \$10,000, proper jurisdiction over his negligence action rests in the justice court and not in the district court.

In this case, it would be difficult, if not impossible, for Voss to amend the jurisdictional defect in his complaint. In order for Voss's complaint to fall under the district court's jurisdiction, he would have to allege over \$10,000 in damages. It is unlikely that the amount of personal

property damage Voss suffered when respondents destroyed his legal documents was over \$10,000.

While NRCP 15 allows a party to amend its pleading, with leave of the court, when justice so requires, the liberal policy of the rule does not mean that leave to amend should always be granted. University & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). If that were the case, leave of the court would not be required. Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). Accordingly, based on Voss's statement of the property damage suffered, the district court properly determined that it lacked jurisdiction to consider Voss' complaint. The district court clerk's failure to file Voss' motions

Shortly after the district court dismissed his complaint, Voss submitted to the district court clerk a motion for reconsideration of the dismissal order, a motion for leave to amend the complaint to correct the jurisdictional defect, a proposed amended complaint, and a notice of appeal. These documents were submitted to the clerk on September 30, 2008. On October 3, 2008, the clerk filed only Voss's notice of appeal. The other documents submitted for filing were never filed. However, on October 15, 2008, the clerk filed respondents' opposition to Voss's motions for reconsideration and for leave to amend his complaint. Additionally, Voss submitted a reply to respondents' opposition October 20, 2008, which was also not filed by the district court clerk.

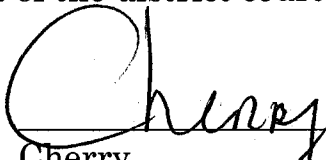
"[I]t is the duty of the court clerk to accept for filing any paper presented to her which is in acceptable form under court rules and is accompanied by the requisite fee unless she has specific instructions from the court to the contrary." Bowman v. District Court, 102 Nev. 474, 478, 728 P.2d 433, 435 (1986). The clerk has no authority to pass upon the validity of documents presented for filing. Id. When documents are timely


received, in substantially the right form, a party should not be precluded from a right of review. Bing Constr. v. State, Dep't of Taxation, 107 Nev. 630, 632, 817 P.2d 710, 711 (1991). Accordingly, the court clerk's failure to file Voss's documents was error.


Moreover, Voss's opposition, motions, proposed amended complaint, and reply were also absent from the record on appeal received from the Sixth Judicial District Court clerk in response to this court's order directing transmission of the district court record. This, too, is error. Under NRAP 11(a)(2), "the record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court." (emphasis added). See Huebner v. State, 107 Nev. 328, 330, 810 P.2d 1209, 1211 (1991) (emphasizing that clerks must create an accurate record of all pleadings submitted for filing, whether or not the documents are actually filed). In the future, we caution the Sixth Judicial District Court clerk to create an accurate record of all pleadings submitted for filing and to file all documents timely submitted in acceptable form.

Because the district court properly concluded that it did not have jurisdiction over Voss's complaint and because the above-noted errors do not warrant reversal, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Richard Wagner, District Judge  
Steven Floyd Voss  
Attorney General Catherine Cortez Masto/Carson City  
Pershing County Clerk