

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWAN THURMOND,
Appellant,
vs.
DARREN COOL, SERGEANT (HDSP),
Respondent.

No. 57048

FILED

DEC 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing a civil rights action and from a post-judgment order denying a motion to alter or amend the dismissal. First Judicial District Court, Carson City; James E. Wilson, Judge.


On August 24, 2010, the district court entered an order dismissing a civil rights complaint filed by appellant Edwan Thurmond, a state prisoner. In his complaint, Thurmond alleged that the prison system lost or improperly confiscated several compact discs owned by Thurmond that contained trial transcripts while transferring Thurmond between prisons. The district court dismissed the complaint based on its conclusion that Thurmond had failed to oppose the motion to dismiss by not complying with the NRCP 16.1 pretrial discovery requirements and that such failure to oppose constituted consent to dismiss the case. Thurmond has appealed this decision.

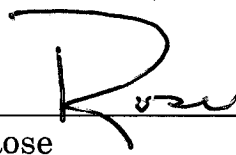
On appeal, Thurmond argues that the district court erred in dismissing his complaint because he did oppose the motion to dismiss, as demonstrated by his district court filings on June 22, 2010, in which he requested that NRCP 16.1 be waived due to his incarceration, and July 14, 2010, in which he argued that incarcerated litigants acting in proper person should be granted greater leeway with the Nevada Rules of Civil Procedure. Respondent has filed an answer, as directed, which does not address the district court's decision to dismiss Thurmond's complaint for a failure to oppose, but instead argues that the complaint fails because Thurmond failed to exhaust his administrative remedies. Thurmond has filed a reply asserting that the response raises issues irrelevant to the procedural issue he appealed.

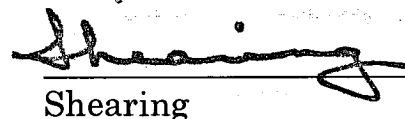
While the district court has discretion to dismiss a case based on a failure to oppose a motion to dismiss, see Walls v. Brewster, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996), dismissal on such grounds was inappropriate here since Thurmond effectively opposed the motion to dismiss with his June 22 and July 14 filings. Indeed, respondent appears to have conceded this point in its answer on appeal. While respondent argues that Thurmond's complaint nevertheless fails due to a failure to exhaust administrative remedies, this argument is based on the claim history and Department of Corrections administrative regulations that should be reviewed in the first instance in district court. See generally Peke Resources, Inc. v. District Court, 113 Nev. 1062, 1068-69 n.5, 944 P.2d 843, 848 n.5 (1997) (explaining that this court is generally limited in

its review to the record on appeal). We decline to address these arguments for the first time on appeal. Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹

 _____, J.
Pickering

 _____, Sr. J.
Rose

 _____, Sr. J.
Shearing

cc: Hon. James E. Wilson, District Judge
Edwan Thurmond
Attorney General/Carson City
Carson City Clerk

¹The Honorable Robert E. Rose and the Honorable Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

In light of this order, we deny as moot Thurmond's December 5, 2011, "motion for leave to file relevant court decision to supplement case appeal statement."