

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD KIMSEY,
Appellant,
vs.
MELODI LEAVITT,
Respondent.

No. 35933

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant James Edward Kimsey's complaint against respondent Melodi Leavitt for being untimely pursuant to NRCP 4(i) and imposing sanctions on Kimsey pursuant to NRCP 11.

NRCP 4(i) provides that a complaint must be served within 120 days of being filed, unless there is a legitimate excuse for the delay.¹ Here, Kimsey filed his complaint on September 23, 1999. The district court found that Leavitt was not served until February 2, 2000. Leavitt was served with Kimsey's original complaint approximately 132 days after it was filed. The court found that Kimsey did not have a legitimate explanation for his delay. Kimsey has failed to cite any evidence that the court's determination constituted an abuse of discretion.² Our review of the record has not revealed any such abuse. Therefore, we conclude that the dismissal of Kimsey's complaint was within the court's discretion and will not be disturbed on appeal.

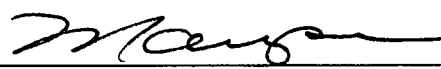
¹See Scrimmer v. Dist. Ct., 116 Nev. 507, 512-13, 998 P.2d 1190, 1193 (2000).

²See id. at 513, 998 P.2d at 1193-94.

Kimsey also appeals from the district court's imposition of a \$500.00 sanction. NRCP 11 provides that sanctions may be imposed on a party who signs a pleading not well grounded in fact, law, good faith, or is used for purposes of harassment.³

Here, Kimsey's complaint against Leavitt alleged such causes of action as slander, defamation, and racketeering. Kimsey also alleged numerous non-pertinent facts, to wit: Leavitt abused drugs, abused her children, and engaged in suspicious financial transactions. We, therefore, conclude that the record shows that the district court did not abuse its discretion by sanctioning Kimsey under NRCP 11.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C. J.
Maupin


_____, J.
Young


_____, J.
Shearing

cc: Hon. Norman C. Robison, Senior Judge
James Edward Kimsey
Melodi Leavitt
Clark County Clerk

³See Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

⁴See Washoe County Dist. Attorney v. Dist. Ct., 116 Nev. 629, 636, 5 P.3d 562, 566 (2000). We have carefully reviewed Kimsey's argument that the district court failed to consider pending motions and the disqualification of his counsel. We conclude that both these arguments are without merit.