IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EDWARD MOORE,

Appellant,

vs.

QUALITY TOWING, S. COLLINS, B. OAKS, AND JAMES COOK,

Respondents.

No. 36130

FILED

SEP 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing appellant's complaint based on the expirations of purportedly applicable statutes of limitation. Because the district court erred in its application of the limitation periods to this case, we reverse the order of the district court and remand for further proceedings.

On November 18, 1999, appellant John Edward Moore filed a proper person complaint against respondents Quality Towing, Officer S. Collins of the Las Vegas Metropolitan Police Department ("LVMPD"), Officer B. Oaks of the LVMPD, and James Cook, a locksmith. In the complaint, Moore alleged that, on July 29, 1997, Officers Collins and Oaks caused his 1970 Chevrolet truck to be towed and impounded at Quality Towing in connection with a drive-by shooting in North Las Vegas. Thereafter, once in August 1997 and again in September 1997, Quality Towing allegedly denied Moore access to his truck and refused to release the vehicle, purportedly under the instructions of Officers Collins and Oaks. Further, on September 11, 1997, Officers Collins and Oaks allegedly hired Cook, a locksmith, to open a utility box in the truck. Moore claimed that, in the process of opening the box, Cook damaged the lock and the box. The vehicle's detention, Moore also alleged, was not



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pursuant to a judicial order, judgment, or forfeiture proceeding. Based on the allegations, Moore asserted three causes of action.

In his first cause of action, Moore stated in part that Quality Towing had "unreasonably refused [him] access to or release of his [vehicle] in violation of Nevada law." In the second cause of action, he alleged in part that Officers Collins and Oaks improperly seized and detained his vehicle, without due process, and deprived him of the use and enjoyment of the vehicle. In the third, Moore essentially alleged that Cook wrongfully damaged the vehicle's utility box. In conjunction with the first and second causes of action, Moore sought damages for, among other things, emotional distress.

Following service of process, respondents moved to dismiss the complaint as being barred by purportedly applicable statutes of limitation. They cited NRS 11.190(4)(e), pertaining to actions to recover damages for personal injuries or death, and, inexplicably, NRS 11.190(5)(a), pertaining to actions to recover goods or other property seized by a tax collector. Moore opposed the motion, contending that his complaint stated claims for conversion. On May 1, 2000, the district court entered a written order granting the motion to dismiss. The order specifically cites NRS 11.190(4)(e) and NRS 11.190(5)(a), and concludes that Moore's claims were clearly barred by these statutes. Moore appealed, in proper person, and respondents have filed a response pursuant to our directive.

As an initial matter, respondents concede that NRS 11.190(5)(a) was inapplicable to Moore's action. Therefore, the district court's error in applying this provision is admitted.

Respondents maintain, however, that the district court properly dismissed the complaint on the ground that Moore pleaded a claim for "emotional distress," to which a two-year statute of limitation

applies pursuant to NRS 11.190(4)(e).[1] This contention is plainly without merit--the only mention of emotional distress in the complaint is as part of the damages Moore allegedly suffered. Aside from the purported emotional distress claim, respondents fail to identify any other personal injury claim alleged by Moore, such that NRS 11.190(4)(e) applied to bar his action.

Nevada is a notice-pleading state, and a complaint need only allege facts sufficient to state a legal theory of recovery.[2] "Conversion exists where one exerts wrongful dominion over another's personal property or wrongful interference with the owner's dominion."[3] A trespass to chattel can occur if a person impairs the condition, quality, or value of another's chattel.[4] We conclude that Moore's complaint alleged, for purposes of determining which statute of limitation applies, claims sounding in the torts of conversion and/or trespass to chattel. Under NRS 11.190(3)(c), conversion and trespass to chattel have a three-year statute of limitation period; therefore, Moore's complaint was not time barred. Accordingly, because the district court erred when it dismissed the complaint under NRS 11.190(4)(e) and NRS 11.190(5)(a), we

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[1]The parties do not dispute that the incidents giving rise to the complaint occurred between July and September 11, 1997. Thus, if a two-year statute of limitation applies, the last date to timely file the complaint would have been September 11, 1999, two months before November 18, 1999, when Moore commenced his action.

[2]See NRCP 8; Chavez v. Robberson Steel Co., 94 Nev. 597, 584 P.2d 159 (1978).

[3]Bader v. Cerri, 96 Nev. 352, 357 n.1, 609 P.2d 314, 317 n.1 (1980), overruled in part on other grounds by Evans v. Dean Witter Reynolds, Inc., 116 Nev. 598, 611, 5 P.3d 1043, 1051 (2000).

[4]Restatement (Second) of Torts § 218 (1979).

REVERSE the order of the district court and REMAND for further proceedings consistent with this order.[5]

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Rawlings Olson Cannon Gormley & Desruisseaux
John Edward Moore
Carson City Clerk

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[5]In their response, respondents also argue that Moore's complaint failed to state a claim upon which relief could be granted, separate from the limitations issue. The record shows, however, that their motion to dismiss, and the district court's order granting the motion, addressed only the limitations issue; therefore, respondents raise this contention for the first time on appeal. Because parties may not raise arguments or issues on appeal that were not raised before the district court, we decline to consider this argument. See, e.g., Singer v. Chase Manhattan Bank, 111 Nev. 289, 292, 890 P.2d 1305, 1307 (1995). For the same reason, we do not consider respondents' argument relating to NRS 11.190(4)(a). Last, we reject respondents' argument that their motion to dismiss was unopposed; the district court made no written finding that Moore's opposition to respondents' motion to dismiss was untimely, and, furthermore, did not grant the motion on this ground.

We deny Moore's motion for leave to file a reply brief, received on November 27, 2000, and direct the court clerk to return, unfiled, the reply brief provisionally received on November 27, 2000. Respondents' motion to strike the reply brief is denied as moot.