

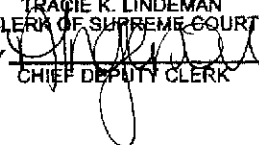
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS GREGORY SHEA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68253

FILED

FEB 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a torts action. First Judicial District Court, Carson City; James Todd Russell, Judge.

After respondent moved to dismiss appellant's complaint, the district court granted the motion based on appellant's failure to file an opposition to the motion. As no opposition to the motion to dismiss was filed within ten days of service of the motion, the district court properly construed the failure to oppose as a consent to granting the motion. See FJDCR 15(3), (5); DCR 13(3).

In his civil appeal statement, appellant argues that he is unable to control when the district court receives his mail because he must entrust his mail to the Nevada Department of Corrections. And he contends that, although it was not received within the deadline, he timely submitted an amendment to his complaint that was intended to address the arguments made in the motion to dismiss. Contrary to his contention that he submitted the amended complaint within the deadline for filing an opposition, the record shows that appellant did not sign the motion to amend his complaint until May 27, 2015, nearly a week after the deadline

for filing the opposition had passed and just two days before entry of the district court's May 29, 2015, order dismissing the complaint.

Generally, once a district court dismisses a complaint, that court lacks jurisdiction to grant a motion to amend the complaint unless the case is reopened pursuant to the Nevada Rules of Civil Procedure. See *Greene v. Eighth Judicial Dist. Court*, 115 Nev. 391, 395, 990 P.2d 184, 186 (1999). But even assuming the district court had received the motion to amend before the order of dismissal was entered,¹ that motion did not indicate that either the motion itself or the proposed amended complaint was intended to serve as an opposition to respondent's motion to dismiss. Moreover, while the motion to amend referenced respondent's argument that appellant's complaint was barred by the statute of limitations,² it did not address any of the other arguments for dismissal included in the motion to dismiss.

Thus, the district court's basis for dismissing the complaint—appellant's failure to file an opposition to the motion to dismiss—was not

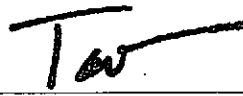
¹While we need not decide this issue, if we were to presume that the prison mailbox rule applied to appellant's motion to amend, the motion would have been deemed filed on May 27, 2015. See *Milton v. Nev. Dep't of Prisons*, 119 Nev. 163, 68 P.3d 895 (2003) (providing that notices of appeal submitted by litigants who are both incarcerated and unrepresented are deemed filed when they are put into the hands of prison officials for mailing).

²In the motion to amend, appellant asserted that his evidence showed that his complaint was mailed before the statute of limitations had run. But the prison mailbox rule has not been extended to apply to the filing of civil complaints. See *Milton*, 119 Nev. 163, 68 P.3d 895. Thus, even if it had been properly presented, this argument would not have been sufficient to overcome respondent's argument with regard to the statute of limitations.

cured by the motion to amend. As a result, the dismissal for failure to oppose the motion to dismiss was proper, even when considering appellant's motion to amend the complaint. See FJDCR 15(3), (5); DCR 13(3). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
Thomas Gregory Shea
Attorney General/Carson City
Carson City Clerk