

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN EUGENE LEPLEY,
Appellant,
vs.
THE STATE OF NEVADA, EX REL.
NEVADA DEPARTMENT OF
CORRECTIONS; E.K. MCDANIEL; AND
BRIAN WARNER HAGAN,
Respondents.

No. 70263

FILED

SEP 06 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a contracts action.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Brian Eugene Lepley, an inmate, sued respondents, asserting a claim for breach of contract. In support of his claim, Lepley alleged that he entered into a settlement agreement with respondents in connection with a federal court action and that respondents breached that agreement by failing to apply 240 "stat. credits" against his sentence. Respondents moved for summary judgment, arguing that the record demonstrated that they applied the credits in accordance with the settlement agreement. The district court subsequently granted respondents' motion on the ground that Lepley failed to file a timely opposition. This appeal followed.

¹We direct the clerk of the court to modify the caption on the docket for this appeal to conform to the caption on this order.

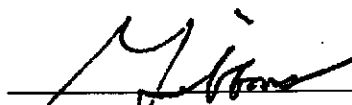
Lepley initially contends that he timely filed his opposition to respondents' motion for summary judgment, but the record reflects that he did not file or serve it until approximately two weeks after the deadline for doing so had passed. See NRCP 6 (setting forth the procedure for computing time); see also FJDCR 15(3) (providing that the opposing party shall have ten days after service of the moving party's motion to serve and file an opposition). As a result, we conclude that the district court did not abuse its discretion in treating Lepley's failure to timely file and serve his opposition to respondents' motion for summary judgment as a consent to granting that motion. See FJDCR 15(5) (providing that failing to file an opposition to a motion within the allotted time "shall constitute a consent to the granting of the motion"); *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 278 n.15, 182 P.3d 764, 768 n.15 (2008) (concluding that the district court did not abuse its discretion by applying EDCR 2.20(b) (now EDCR 2.20(e)), which is analogous to FJDCR 15(5), to an opposition that was not timely filed).

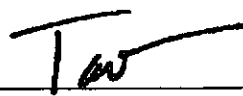
Moreover, none of Lepley's appellate arguments demonstrate that the district court otherwise erred by granting summary judgment. In particular, Lepley's argument that he did not receive notice of entry of the district court's order granting summary judgment quickly enough does not address the propriety of the district court's order granting summary judgment. While his assertion that the district court failed to address his motions for an extension of his prison copy work limit could be read as arguing that he was unable to respond to the summary judgment motion, the record demonstrates that the court did not rule on those motions because Lepley failed to file requests for submission for them until more than two weeks after summary judgment had been entered. See FJDCR

15(6) (requiring a party to request the submission of a motion to the trial court once the period for the related motion practice expires). And although Lepley seems to argue that the First Judicial District Court should be required to implement an electronic filing system, there is no basis for requiring that court to implement such a system, see NEFCR (4)(a) (providing that a district court *may* establish an electronic filing system if that system meets the minimum requirements set forth in the NEFCR), and regardless, the lack of an electronic filing system did not prevent Lepley from timely filing an opposition and serving respondents with such opposition by mail.

Accordingly, we affirm the district court's order granting respondents' motion for summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing the district court's order granting summary judgment de novo).

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²Lepley also requests that the underlying proceeding be consolidated with a related action before the Eighth Judicial District Court, but, in light of our conclusions herein, we deny his request as moot.

cc: Hon. James E. Wilson, District Judge
Brian Eugene Lepley
Attorney General/Carson City
Carson City Clerk