

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN L. SCOTT,
Appellant,
vs.
CASEWORKER CAMBY;
CASEWORKER GARCIA; CHAPLAIN
YOUNGBLOOD; JAMES COX; AND
CATHERINE CORTEZ MASTO,
Respondents.

No. 70093

FILED

DEC 21 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an inmate litigation action.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Respondents moved to dismiss the underlying case on January 26, 2016, arguing, among other things, that appellant had failed to timely perfect service of the summons and complaint. Appellant failed to oppose that motion. Respondents subsequently filed a notice of non-opposition regarding their motion to dismiss on February 29, which again elicited no

¹To the extent appellant questions this court's jurisdiction over this matter, his notice of appeal was filed before his motion for reconsideration of the challenged order. And the timely filing of the notice of appeal divested the district court of jurisdiction over the underlying case, including the motion for reconsideration, and vested jurisdiction in Nevada's appellate courts. See *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (stating that the filing of a timely notice of appeal vests jurisdiction in Nevada's appellate courts and divests the district court of jurisdiction to revisit issues pending before the appellate courts).

response from appellant. Thereafter, the district court held a hearing on the motion to dismiss on March 2, and an order dismissing the underlying complaint was subsequently entered on March 29. This appeal followed.

In challenging the dismissal order, appellant argues, among other things, that he had only three working days to respond to this motion, which he claims to have received on February 4, 2016.² But this assertion is belied by the record. Respondents' motion to dismiss plainly stated that the hearing on that motion was set for March 2, which was more than a month after the motion was served on appellant. Moreover, appellant never filed even an untimely opposition, even though respondents filed and served a notice of his failure to oppose the motion on February 29, 2016, and the order granting the motion to dismiss was not filed until March 29, 2016, 27 days after the March 2 hearing on that motion. And while appellant asserts that he submitted letters requesting a continuance of the hearing on the motion to dismiss, no such documents appear in the record before us.

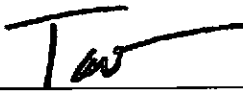
EDCR 2.20(e) provides that the failure of a party to file and serve an opposition to a motion "may be construed as an admission that the motion . . . is meritorious and a consent to granting the same." Here, given appellant's failure to file an opposition to the motion to dismiss, we conclude that the district court did not abuse its discretion in dismissing appellant's case. *See King v. Cartridge*, 121 Nev. 926, 927-28, 124 P.3d


²In making this argument, appellant references the February 10 hearing date for his motions for default judgment and to continue the hearing on the default judgment. The district court ultimately continued the February 10 hearing and considered these motions at the March 2 hearing on respondent's motion to dismiss.

1161, 1162 (2005) (noting that the decision to dismiss a case for failure to oppose a dispositive motion rests within the district court's discretion and concluding that the district court did not abuse its discretion in granting summary judgment under that rule when the opposition to the summary judgment motion had been untimely filed). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Eric Johnson, District Judge
Steven Larue Scott
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

³In light of our resolution of this matter, we need not consider appellant's remaining arguments, which address the grounds on which respondents sought to have his case dismissed.