

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVELL MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA; THE STATE  
OF NEVADA DEPARTMENT OF  
CORRECTIONS; AMBER FRYER;  
LARRY HEGGE; AND ROBERT  
LEGRAND, WARDEN,  
Respondents.

No. 71650

**FILED**

FEB 27 2017

ELIZABETH BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting a motion for judgment on the pleadings and dismissing a torts and civil rights action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Appellant Devell Moore, an inmate, filed the underlying complaint against respondents based on an incident in which he was confined to his cell for a period of time and a racial epithet was purportedly used against him. Respondents moved for judgment on the pleadings, and Moore requested leave to amend his complaint. The district court concluded that, as drafted, Moore's complaint failed to state a claim. But the court deferred ruling on the motion to amend and directed Moore to file a supplement, postmarked by September 2, 2016, demonstrating that amendment would not be futile. Moore did not mail the supplement until September 12, 2016, and the district court granted respondents judgment on the pleadings and dismissed the complaint

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without explicitly addressing the supplement or ruling on the motion to amend. This appeal followed.

On appeal, Moore contends that the district court violated his right to due process by dismissing his case without considering the supplement and granting him leave to amend.<sup>1</sup> But Moore acknowledges in his appeal statement that he did not mail his supplement until September 12, 2016, which was ten days after the district court's deadline to postmark that document. Moreover, Moore has offered no explanation, either before the district court or before this court, as to why he failed to meet the district court's deadline. Thus, he waived any such argument. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). As a result, we discern no abuse of discretion in the district court's failure to address the untimely supplement in its order dismissing the action.

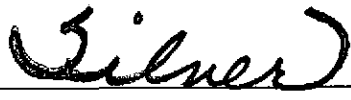
Similarly, because Moore makes no arguments on appeal regarding the original motion to amend or whether the original complaint stated a claim, he has waived any such arguments. *See also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed


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<sup>1</sup>To the extent that Moore argues the district court failed to rule on his motion to amend, the district court's dismissal of the complaint without granting leave to amend effectively denied that motion. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (concluding that a district court's failure to rule on a request constituted a denial of that request).

waived). Accordingly, we necessarily affirm the district court's decisions denying leave to amend and dismissing the underlying complaint.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jim C. Shirley, District Judge  
Devell Moore  
Attorney General/Carson City  
Attorney General/Las Vegas  
Pershing County Clerk