

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES CLINTON NEWTON, JR.,
Appellant,
vs.
THE STATE OF NEVADA; DIRECTOR
OF NDOC MAIL ROOM; AND NEVADA
DEPARTMENT OF CORRECTIONS,
Respondents.

No. 73109

FILED

DEC 14 2017

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

ORDER OF AFFIRMANCE

Charles Clinton Newton, Jr. appeals from a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

This case arises from a civil rights action wherein appellant Charles Newton asserted that employees of the Nevada Department of Corrections (NDOC) improperly opened his legal mail outside his presence and damaged the same by tearing it in half. In the proceedings below, the district court granted NDOC's motion to dismiss, concluding that Newton failed to state a claim upon which relief could be granted.

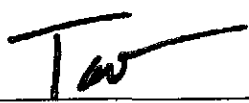
Specifically, regarding his first cause of action—that NDOC improperly opened his legal mail—the district court concluded that incoming mail from the court, as opposed to an inmate's attorney, is not legal mail and Newton's complaint alleged that the improperly opened mail was from the Clerk of the United States District Court, citing *Keenan v. Hall*, 83 F.3d 1083, 1094 (9th Cir. 1996), among other cases. Thus, the district court concluded Newton could prove no set of facts that would entitle him to relief. Regarding Newton's second cause of action—that NDOC damaged his mail—the district court concluded that NDOC does not have a duty to ensure an inmate's mail is not torn, that Newton failed to allege that

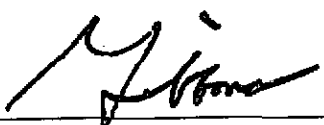
NDOC caused the tear in his mail, and that Newton failed to allege how he was injured as a result of his mail being torn. Accordingly, the district court concluded that Newton's second cause of action must also be dismissed. This appeal followed.

On appeal, Newton argues only that his complaint was improperly dismissed because he was not able to serve all of the defendants in this matter. He contends that, because he is incarcerated and proceeding in proper person, he did not have the proficiency or resources to obtain copies of his pleadings to have them properly served. But the district court did not dismiss the complaint for a failure to properly serve. Instead, as discussed above, Newton's complaint was dismissed due to his failure to state a claim upon which relief could be granted. *See* NRCP 12(b)(5) (allowing a motion to dismiss for failure to state a claim upon which relief can be granted); *cf.* NRCP 12(b)(4) (allowing a motion to dismiss for insufficient service of process). Because Newton fails to raise any arguments addressing the grounds relied on by the district court in dismissing his complaint, he has waived any such challenge. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). As a result, we necessarily affirm the district court's order dismissing Newton's complaint.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Charles Clinton Newton, Jr.
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk