

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL SCHULZ,
Appellant,
vs.
CARSON TAHOE HOSPITAL; AND
DAVID JOHNSON, M.D.,
Respondents.

No. 73938

FILED

OCT 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Schulz appeals from a district court order dismissing his complaint in a professional negligence action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Schulz filed a complaint against respondents alleging professional negligence. Respondents both moved to dismiss arguing, in part, that Schulz failed to attach the required medical expert affidavit to support his claims. Schulz failed to oppose the motions and the district court granted dismissal. This appeal followed.

While Schulz asserts that he filed an opposition, our review of the record does not show that an opposition was filed¹ to the respondents'

¹We note that Schulz did file a "motion" on July 19, 2017, which was after the dismissal motions were filed by respondents. To the extent Schulz intended this document to be an opposition, it failed to actually raise any points in opposition to the motions to dismiss and therefore does not constitute an opposition.

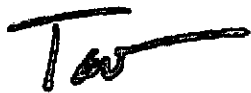
motions to dismiss and therefore, any arguments in opposition to the dismissal motions are not properly before us on appeal.² See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). Regardless, dismissal was proper because Schulz failed to attach the necessary medical expert affidavit in support of his professional negligence claim. See NRS 41A.071 (providing that the district court shall dismiss a professional negligence action that is filed without a supporting medical expert affidavit); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (“A complaint that does not comply with NRS 41A.071 is void and must be dismissed; no amendment is permitted.”).³ Accordingly, we

²While they do not appear to be causes of action separate from the professional negligence cause of action, to the extent Schulz’s mention of libel and HIPAA violations in the complaint could be construed as additional causes of action, aside from his failure to oppose the motions to dismiss, dismissal was also proper because he failed to state a claim upon which relief could be granted by failing to set forth factual allegations to support these claims and, as argued below by respondent David Johnson, M.D., HIPAA violations do not provide a private cause of action. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing the standard for dismissal for failure to state a claim); *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th Cir. 2007) (stating that HIPAA provides no private right of action).

³The court in *Washoe Medical Center* was applying a prior version of NRS 41A.071, but the language pertinent to this matter did not change and thus, the holding is applicable to the instant case.

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
Michael Schulz
Pollara Law Group
Mandelbaum, Ellerton & Associates
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
Carson City Clerk

⁴We have reviewed the various documents filed by Schulz and to the extent these documents attempt to provide additional information, not presented in the district court, we do not consider any such information because this court cannot consider matters that do not properly appear in the record on appeal. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). We have otherwise reviewed these documents and conclude they do not provide a basis for relief.