

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY SHEPARD,
Appellant,
vs.
BEN GUTIERREZ; DR. CALDERON;
SONYA CARRILLO; AND THE STATE
OF NEVADA,
Respondents.

No. 74004

FILED

SEP 21 2018

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

ORDER OF AFFIRMANCE

Gary Shepard appeals from a district court order dismissing his complaint in a civil rights action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Shepard, an inmate, sued respondents Ben Gutierrez, Dr. Calderon, and Sonya Carrillo, who are employees of the Nevada Department of Corrections, as well as the State of Nevada, asserting a claim for cruel and unusual punishment based on deliberate indifference to his serious medical needs. Respondents moved to dismiss Shepard's complaint under NRCP 12(b)(5), arguing that it did not state a claim for which relief could be granted. Shepard did not oppose that motion within his time for doing so, but instead, he sought leave to amend his complaint and submitted a proposed amended complaint. Following a hearing on the matter at which Shepard was not present, the district court issued minutes warning him that, if he did not file an opposition, the court would grant respondents' motion as unopposed. *See* EDCR 2.20(e) (authorizing the district court to construe a party's failure to oppose a motion as a consent to granting the same). But when Shepard later failed to file an opposition, the district court entered a written order that considered respondent's motion on the merits,

found that Shepard failed to state a claim, and dismissed his case. This appeal followed.


On appeal, Shepard focuses on his amended complaint and presents various arguments as to why he believes the allegations set forth therein were sufficient to state a claim. But we need not determine which complaint constituted the operative complaint in this matter, as Shepard's original and amended complaints included substantively identical allegations, and he waived his appellate arguments as to the sufficiency of those allegations by failing to present them before the district court. *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.").

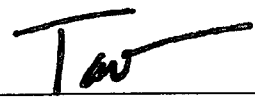
Shepard attempts to overcome that waiver by baldly asserting that his amended complaint was responsive to respondents' motion to dismiss. But, as discussed above, Shepard's amended complaint was substantively identical to his original complaint, and as a result, it did not address the deficiencies identified in respondents' motion to dismiss. And while Shepard further argues that he was unfamiliar with the deadline for filing an opposition, that he did not receive a copy of the district court's minutes, and that he is entitled to leniency as a pro se litigant given limitations on his access to the prison law library and his need to rely on the prison mailroom, those arguments fail, as he was required to comply with applicable court rules regardless of his pro se status. *See Lombardi v. Citizens Nat'l Tr. & Sav. Bank of L.A.*, 289 P.2d 823, 824 (Cal. Dist. Ct. App. 1955) (explaining that litigants proceeding pro se are not entitled to assistance from the court, but rather, must be restricted to the same procedural rules as parties proceeding through attorneys). Moreover, nothing required either the district court or respondents to serve Shepard with a copy of the court's minutes, and Shepard has not otherwise

demonstrated that he was denied meaningful access to the courts in the present case. See *Lewis v. Casey*, 518 U.S. 343 (1996) (discussing the constitutional right to access the courts). And insofar as Shepard asserts that his filing of a motion for leave to amend his complaint somehow extended his time to oppose respondents' motion to dismiss, his argument fails as no legal authority supports that proposition.

Thus, given the foregoing, Shepard failed to demonstrate that the district court erred in dismissing his case.¹ See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (reviewing a district court order dismissing a complaint de novo). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Joanna Kishner, District Judge
Gary Shepard
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

¹Having considered Shepard's remaining arguments, we discern no basis for relief. And insofar as Shepard requests that this matter be transferred to the United States District Court for the District of Nevada, his request is denied as moot.

²On September 14, 2018, Shepard file a motion for an extension of time to file a reply brief, which we construe as a motion for leave to file a reply. Having considered Shepard's motion, we grant it and direct the clerk of court to file Shepard's reply brief.