

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE TORRES LOMAS,
Appellant,
vs.
TARA CARPENTER; RENEE BAKER,
WARDEN; JAMES DZURENDA,
DIRECTOR; M. GRANT; SGT.
LINDBERG; AND V. LOFTUS,
Respondents.

No. 75733-COA

FILED

APR 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Torres Lomas appeals from a district court order dismissing a civil rights and state tort complaint. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.


Lomas, a prisoner, filed his complaint against respondents alleging violations of the First, Fifth, and Fourteenth Amendments to the United States Constitution and negligence regarding the taking, loss or destruction of his property. Respondents moved to dismiss and Lomas failed to timely file an opposition. The district court granted the motion, finding that: 1) Lomas failed to timely file an opposition, thereby leaving the motion unopposed, which it could construe as an admission the motion was meritorious and as consent to granting the motion; 2) Lomas failed to state a claim under the First, Fifth and Fourteenth Amendments; and 3) he failed to comply with NRS 41.031 such that the district court did not have jurisdiction over his state negligence claim. This appeal followed.


On appeal, Lomas fails to raise any arguments in his brief challenging the district court's determinations regarding his failure to timely file an opposition, his failure to state a First or Fifth Amendment claim, and his failure to comply with NRS 41.031, and he has thus waived

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any such arguments. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived). As to the Fourteenth Amendment claim, Lomas asserts that the deprivation of his property was unauthorized, which actually supports the district court's order because there is no violation where there is an unauthorized deprivation of property if the state provides an adequate post-deprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (providing that neither negligent nor unauthorized intentional deprivations of property violate the Fourteenth Amendment if adequate state post-deprivation remedies are available). And while he baldly asserts that respondents' argument that there is no violation under these circumstances should not be persuasive, he fails to offer any explanation as to why he believes this is so.

As a result, based on the forgoing analysis, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerome M. Polaha, District Judge
Jose Torres Lomas
Attorney General/Carson City
Washoe District Court Clerk