

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JULIUS JACOB LUDWIG,
Appellant,
vs.
THE CITY OF SPARKS; AND THE
POLICE DEPARTMENT OF THE CITY
OF SPARKS,
Respondents.

No. 68365

FILED

MAR 11 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing an action seeking the return of seized property. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

In February 2015, appellant filed a motion under NRS 179.085(1)¹ for the return of property, which he alleged was illegally seized from him in September 2011.² The district court construed the

¹NRS 179.085 permits a person aggrieved by an unlawful search and seizure to move for the return of seized property. After Ludwig commenced the underlying action, the Nevada Legislature amended NRS 179.085, effective October 1, 2015. 2015 Nev. Stat., Ch. 113, § 1, at 405-06. The amendment, however, does not affect the disposition of this appeal.

²The motion also sought suppression of the property as evidence in future trials, but the district court ruled that such relief was not available in this proceeding. As appellant waived any challenge to this conclusion by failing to raise it in his civil appeal statement, *cf. Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that “[i]ssues not raised in an appellant’s opening brief are deemed waived”), we necessarily affirm the district court’s conclusion that suppression was not an available remedy.

motion as a complaint and granted respondents' motion to dismiss the action as barred by the statute of limitations. This appeal followed.

On appeal, appellant first argues that no statute of limitations applies to motions for the return of illegally seized property. Although appellant styled his filing as a motion, he did not file it in a pending case, but instead, used it to initiate an independent action for the recovery of property. Thus, the district court properly concluded that the action was subject to NRS 11.190(3)(c), which provides that "[a]n action for taking, detaining or injuring personal property, including actions for specific recovery thereof" must be brought within three years of accrual. See *Hartford Ins. v. Statewide Appliances, Inc.*, 87 Nev. 195, 197-98, 484 P.2d 569, 571 (1971) (recognizing that the object of the action determines what statute of limitations applies). And because appellant alleged that his property was wrongfully seized in September 2011, the district court also properly concluded that, under the general rule for applying a statute of limitations, his claims accrued at that time. See *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990) ("The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought."); see also *Coy v. Cty. of L.A.*, 1 Cal. Rptr. 2d 215, 220-21 (Ct. App. 1991) (holding that a claim that property was unlawfully seized accrues on the date of seizure).


Nevertheless, appellant further argues that, even applying the statute of limitations, his complaint was timely because any limitations period was tolled while he was being prosecuted in a criminal action relating to the seized property. Our research, however, has not revealed any Nevada authority providing for the tolling of an illegal seizure claim

during the pendency of a criminal proceeding relating to the seized property. To the extent that appellant's argument could be construed as asserting that his claims were tolled under the discovery rule, appellant does not argue that he failed to discover the facts giving rise to his claim until sometime after the seizure. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (applying the discovery rule to a cause of action governed by NRS 11.190(3)(c)); *Petersen*, 106 Nev. at 274, 792 P.2d at 20 (explaining that the discovery rule tolls the statutory period of limitations "until the injured party discovers or reasonably should have discovered facts supporting a cause of action").

Thus, we conclude that the district court correctly determined that the statute of limitations expired in September 2014, three years after appellant's claim accrued under the general rule. *See* NRS 11.190(3)(c). As appellant did not commence the underlying case until February 2015, the district court properly dismissed the action as time-barred. *See Bemis*, 114 Nev. at 1024, 967 P.2d at 439 ("A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations."). Accordingly, we affirm the district court's order dismissing appellant's case.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Julius Jacob Ludwig
Sparks City Attorney
Washoe District Court Clerk