

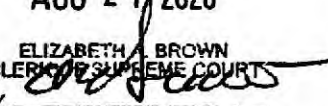
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY EARL JOHNSON, AN
INDIVIDUAL,
Appellant,
vs.
ERIN MCREYNOLDS, AN
INDIVIDUAL,
Respondent.

No. 79532-COA

FILED

AUG 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jerry Earl Johnson appeals from a district court order dismissing a tort action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Johnson filed a complaint against respondent Erin McReynolds on April 11, 2019, alleging causes of action for defamation and intentional infliction of emotional distress related to statements made by McReynolds on February 10, 2017. McReynolds moved to dismiss due to the expiration of the two-year statute of limitations and the district court granted the motion over Johnson's opposition. This appeal followed.


On appeal, Johnson does not dispute that his claims were subject to a two-year statute of limitations or that his complaint was actually filed after it expired. Instead he asserts that he was incarcerated and that he timely submitted the complaint in the prison mail system but that it was misplaced. He then argues that the "prison mailbox rule," which would deem the complaint filed on the date he submitted it to prison officials, should be applied to conclude his complaint was timely filed. But the Nevada Supreme Court declined to extend the prison mailbox rule to

the filing of pleadings commencing a civil action in a case that, like the instant matter, was subject to a two-year statute of limitations. *See Milton v. State, Dep't of Prisons*, 119 Nev. 163, 165, 68 P.3d 895, 896 (2003) (“[Appellant] asks us to extend [the prison mailbox rule] beyond notices of appeal to the filing of pleadings commencing any civil action. We decline his invitation to do so.”).

And while Johnson argues that whether the mail box rule applies should be determined on a case-by-case basis, in *Milton*, the supreme court only noted one exception to its decision not to extend the prison mail box rule to civil complaints, which is not applicable here. Notably, the supreme court held that a party could obtain relief by showing that the delay in filing was the result of “some mischief,” although relief would only be available if fraud was shown. *Id.* at 165 n.11, 68 P.3d at 896 n.11. But the court specifically stated that, if the delay was caused by the “vagaries” of the prison mail system, there would be no relief available. *Id.* And here, Johnson makes no allegations of “mischief” or fraud, and instead essentially asserts that the delay was caused by the vagaries of the prison mail system. *See id.* Based on the foregoing, we necessarily

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Jerry Earl Johnson
Douglas Crawford Law
Eighth District Court Clerk