

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMON R. JOHNSON,  
Appellant,  
vs.  
MARNELL GAMING, LLC; ROSIES  
CAFE; AND NUGGET CASINO  
RESORT,  
Respondents.

No. 82097-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Damon R. Johnson appeals from a district court order dismissing a complaint in a tort action. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Johnson filed a complaint against respondents seeking damages in connection with his stay at a Sparks hotel in 2018. Specifically, Johnson alleged that he became ill and incurred damages as a result of food poisoning after ordering a meal from one of the hotel's restaurants, and also that the hotel refused to reimburse Johnson for fraudulent charges to his room. Respondents moved to dismiss Johnson's complaint on grounds that he filed it over two years after the alleged incidents occurred and that the claims were therefore time-barred under the relevant statute of limitations. Johnson—who is incarcerated—failed to timely oppose the motion, and the district court granted it as unopposed under DCR 13.<sup>1</sup> This appeal followed.

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<sup>1</sup>DCR 13(3) provides that “[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.” We note that although

Generally, we review a district court order granting a motion to dismiss de novo. *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 64, 412 P.3d 56, 59 (2018). However, we review a district court's decision to grant a motion for failure to timely oppose under DCR 13 for an abuse of discretion. *King v. Carlidge*, 121 Nev. 926, 926-27, 124 P.3d 1161, 1162 (2005).

On appeal, Johnson vaguely contends that the Nevada Department of Corrections (NDOC) violated his civil rights by restricting his access to the courts, that he believes he sent his answering points and authorities to respondents in response to their motion to dismiss, and that he lacks knowledge of the law and wishes to have counsel appointed to assist him with his case. But Johnson does not dispute in his informal brief that he was timely served with the motion to dismiss, nor does he explain how NDOC supposedly prevented him from filing a timely opposition. See WDCR 12(2) (providing that a party responding to a motion "shall file and serve upon all parties, within 14 days after service of a motion, answering points and authorities"). Moreover, even assuming the district court should have considered the untimely answering points and authorities that Johnson mailed to the court after it had already granted the motion to dismiss, that document did not set forth any arguments concerning the motion's merits. And finally, we note that "the rules of civil procedure cannot be applied differently merely because a party not learned in the law is acting pro se," *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258 (2018) (internal quotation marks omitted), and there is

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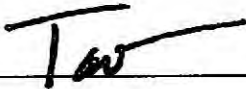
the Washoe District Court Rules do not speak to the question of whether a district court may grant a motion solely on grounds that it is unopposed, DCR 5 provides that "[t]hese rules cover the practice and procedure in all actions in the district courts of all districts where no local rule covering the same subject has been approved by the supreme court."

generally no right to counsel in civil proceedings, see *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804, 102 P.3d 41, 45 (2004) (“[T]he Sixth Amendment guarantee of the right to counsel applies only in criminal prosecutions.”).

Under these circumstances, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge  
Damon R. Johnson  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Washoe District Court Clerk

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<sup>2</sup>Insofar as Johnson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.