

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON EVAN BROWNE,  
Appellant,

vs.

JEREMY BEAN; CHARLES DANIELS;  
BOB FAULKNER; MICHAEL MINEV;  
AND JENNIFER NASH,  
Respondents.

No. 84788-COA

FILED

MAR 24 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jason Evan Browne appeals from a district court order dismissing his complaint in an inmate litigation matter. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Browne, an inmate, commenced the underlying action against the State of Nevada, the Nevada Department of Corrections (NDOC), and several NDOC officials and employees, alleging that they failed to provide him with adequate dental care. Based on that allegation, Browne asserted claims for violation of his rights under the Eighth Amendment to the United States Constitution, negligent supervision, and violation of NRS Chapter 209, which governs NDOC. Respondents Jeremy Bean, Charles Daniels, Bob Faulker, Michael Minev, and Jennifer Nash moved to dismiss Browne's complaint in its entirety pursuant to, as relevant here, NRCP 12(b)(4), arguing that he did not properly and timely effect service of process on any of the defendants named in his complaint. The district court agreed and

dismissed Browne's complaint, in its entirety, without prejudice over his opposition. This appeal followed.

This court reviews an order dismissing a complaint for failure to effect timely service of process for an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010).

On appeal, Browne essentially argues that the dismissal of his complaint amounted to a violation of his rights to due process and access to the courts since, during the underlying proceeding, he could not physically access his prison's law library due to restrictions that NDOC imposed in connection with the COVID-19 pandemic. However, while Browne generally discusses the difficulties that he encountered as a result of the restrictions, he does not argue or explain how any of these restrictions prevented him from effecting service of process within the 120-day period for doing so. *See* NRCP 4(e)(1) (requiring the plaintiff to serve the summons and complaint upon any named defendants within 120 days after the complaint is filed). And his arguments likewise offer no explanation as to how these restrictions impacted his ability to timely seek an enlargement of time to serve process.<sup>1</sup> *See* NRCP 4(e)(2), (3) (providing that the district

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<sup>1</sup>Approximately four months after the 120-day period expired, Browne moved for leave to serve by publication certain of the defendants named in his complaint. Although the district court implicitly denied this motion when it dismissed his complaint without ruling on the motion, *see Bd. of Gallery of History v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (noting that the court's failure to rule on a request constitutes a denial of the request), Browne does not present any argument concerning

court must dismiss an action with respect to any defendants who are not served within the 120-day service period unless the plaintiff moved for an extension of time before the period expires and demonstrates good cause for the extension). Consequently, Browne has failed to demonstrate that relief is warranted in this respect. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that appellate courts need not consider issues that are unsupported by cogent argument).

Browne further maintains that the dismissal of his complaint violated his rights to due process and access to the courts because the district court granted respondents' motion to dismiss without first conducting a hearing. However, although the district court did not conduct a hearing on respondents' motion, Browne does not dispute that he had notice of the motion, and the record demonstrates that he had an opportunity to respond to the arguments presented therein—which he utilized by filing an opposition—before the district court decided to grant the motion and dismiss Browne's complaint. *See Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (providing that procedural due process requires notice and an opportunity to be heard); *see also Lewis v. Casey*, 518 U.S. 343, 356 (1996) (explaining that a plaintiff's right to access the courts is violated where he or she is prevented from pursuing a nonfrivolous claim). Moreover, EDCR 2.23(c) specifically authorizes the district court to resolve

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the motion on appeal, and we therefore do not address it further, *see Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

motions “on [their] merits at anytime with or without oral argument.” Thus, given the foregoing and because Browne does not present any other argument to challenge the district court’s decision to dismiss his complaint for insufficient service of process, we conclude that he failed to demonstrate that the court abused its discretion in this respect. *Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200. Accordingly, we

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

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Adriana Escobar, District Judge  
Jason Evan Browne  
Attorney General/  
Attorney General/Las Vegas  
Eighth District Court Clerk

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