

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

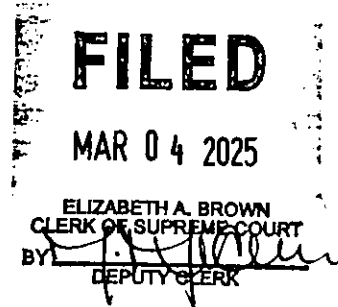
MARK JOEL MCLANE,

Appellant,

vs.

THE STATE OF NEVADA; NDOC;  
HDSP WARDEN CALVIN JOHNSON;  
HDSP DIRECTOR OF NURSING  
BENITO GUTIERREZ; SENIOR  
CORRECTIONS OFFICER N. DEVITO;  
CORRECTION OFFICERS FNV  
FUENTES, A. PEREZ AND FNV  
SHELTON; MAINTENANCE WORKER  
TERRENCE; AND JAYMIE CABRERA,  
Respondents.

No. 88694-COA



*ORDER OF AFFIRMANCE*

Mark Joel McLane appeals from a district court order granting a motion to dismiss an inmate civil rights matter. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In June 2023, McLane initiated the underlying civil rights complaint against respondents the State of Nevada, Nevada Department of Corrections (NDOC), the High Desert State Prison (HDSP) warden and director of nursing, and various NDOC corrections officers and workers, alleging violations of the First and Eighth Amendments and state law claims for intentional infliction of emotional distress and negligence.

In September 2023, respondents filed a motion to dismiss pursuant to NRCP 12(b)(5) or, in the alternative, a motion for summary judgment. At a hearing in October 2023, McLane stated he had not had an opportunity to draft his opposition, and the district court continued the matter for 90 days.

In December 2023, McLane filed an application for a 45-day extension to oppose respondents' motion to dismiss. He argued that he had good cause for failing to oppose the motion because two weeks prior to its filing, McLane's "authorized legal assistant" (another inmate) was placed into administrative segregation and was not released until the end of November 2023. McLane asserted that his case file was in his assistant's possession during the course of his segregation. Consequently, McLane did not have access to his file during that time and was unable to oppose the motion to dismiss.

The district court held a hearing in February 2024 and granted McLane's request for an extension of time to respond to the motion to dismiss. According to the court minutes, McLane informed the court that he was working on his opposition, but it was difficult because another inmate was assisting him and they could only communicate biweekly, and McLane did not have access to the law library. The court advised McLane that it would give him an additional 45 days, but "after that the Court was done." The court further informed McLane that he should do what he needed to do to file his opposition, and if he did not, the court would grant the motion to dismiss as unopposed. The court ordered McLane to file his opposition by March 25 and set the hearing on the motion to dismiss for April 16.

On March 27, respondents filed a notice of non-opposition to the motion to dismiss. On April 2, McLane filed a motion seeking a 30-day extension of time to oppose the motion to dismiss.<sup>1</sup> He asserted that he needed additional time "[d]ue to complications being caused by the facility

---

<sup>1</sup>McLane's motion contained a handwritten date of March 21, it was postmarked March 25, and the district court clerk received it on March 28.

[and] [his] ability to obtain research material from law library to format his response.” He asked for 30 to 45 days to complete his opposition and stated that his motion was “made for good cause.”

Following the hearing on the motion to dismiss, which McLane attended, the district court entered a written order granting respondents’ motion to dismiss, finding that it had previously granted McLane’s request for more time and outlined a briefing schedule, but McLane did not file a timely response after being granted the 45-day extension. The court further found that McLane failed to provide good cause for his third request for an extension of time. The court went on to deny McLane’s motion for the 30-day extension. Additionally, relying on EDCR 2.20(e) (failure to file a written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same), the court granted respondents’ motion to dismiss and dismissed the case with prejudice. This appeal followed.

On appeal, McLane challenges the district court’s dismissal of his case and denial of his motion seeking an additional extension of time to file his opposition to the motion to dismiss. This court applies an abuse of discretion standard in reviewing a district court’s dismissal for failure to oppose a motion to dismiss. *See Walls v. Brewster*, 112 Nev. 175, 178-79, 912 P.2d 261, 263 (1996) (holding that the district court did not abuse its discretion in dismissing a case with prejudice, due to a party’s failure to diligently oppose the motion to dismiss). A district court’s denial of an extension of time is reviewed for an abuse of discretion. *See Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010) (reviewing the denial of an extension of time pursuant to FRCP 6(b), which is substantially similar to NRCP 6(b)). NRCP 6(b)(1)(B) allows the court to grant an

extension of time for good cause if the party makes a request before the expiration of the period originally prescribed, or after the time has expired if the party failed to act because of excusable neglect. EDCR 2.20(e) provides that, within 14 days after service of a motion, the opposing party must serve and file a written opposition. Further, pursuant to EDCR 2.20(e), the failure to file a written opposition may be construed as an admission that the motion “is meritorious and a consent to granting the same.”

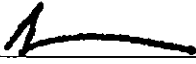
Respondents’ motion to dismiss was filed in September 2023, and the district court twice extended the time for McLane to file his opposition. The court first extended the opposition period in October 2023 by continuing the matter for 90 days, and then granted a second extension in February 2024, giving McLane until March 25 to file his opposition. The court additionally gave McLane notice at the February hearing that it would not give him further extensions and would grant the motion to dismiss based on his failure to oppose if he did not file his response by the March 25 deadline.


On appeal, McLane fails to address the fact that the district court stated it would not grant any further extensions, and he offers no cogent argument as to the court’s finding that he failed to provide good cause for granting an additional extension. Notably, in addressing this point, he offers only a vague assertion that he needed a further extension due to “imposed burdens” and housing restrictions to suggest good cause existed for a third extension. In the absence of any cogent argument on this issue, we see no basis to disturb the district court’s conclusion that good cause did not exist to support an additional extension and its resulting


denial of this request.<sup>2</sup> See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider issues that are not cogently argued).

Moreover, in the absence of good cause for a further extension of time to oppose the motion to dismiss, and given the multiple extensions McLane received, spanning over six months, the court's warning that it would give no further extensions, and McLane's ultimate failure to oppose the motion to dismiss, we cannot say that the court abused its discretion in granting the motion to dismiss for failure to oppose the same. See, e.g., *King v. Cartridge*, 121 Nev. 926, 927-28, 124 P.3d 1161, 1162 (2005) (affirming a summary judgment due to a party's tardy opposition filed several days past the DCR 13(3) deadline and after three continuances had been granted). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

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

---

<sup>2</sup>Given our resolution of the good cause issue, we need not reach McLane's arguments regarding the timeliness of his request for a third extension of time to oppose the motion to dismiss.

<sup>3</sup>Insofar as McLane raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Mary Kay Holthus, District Judge  
Mark Joel McLane  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk