

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THEODORE STEVENS,
Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
WARDEN SANDIE; DWAYNE DEAL;
NANCY FLORES; KELLY
BELLENGER; SHARI KASSENBAUM;
AND ERIC ARMSTEAD,
Respondents.¹

No. 72061

FILED

MAR 28 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Theodore Stevens appeals from a district court summary judgment in a civil rights action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Stevens, an inmate, sued the Nevada Department of Corrections (NDOC) and several of its employees, alleging that he wrote a vampire story, that he was charged with compromising NDOC staff due to the content of the story, and that he was placed in administrative segregation as a result. Based on those allegations, Stevens asserted claims for violation of his rights to free speech and due process. Respondents then moved for summary judgment on issue preclusion grounds, citing one of Stevens' prior federal actions. The district court found that the parties and issues below were identical to those involved in the federal action, that the

¹We direct the clerk of the court to amend the caption for this matter to conform to the caption on this order.

federal action resulted in a judgment against Stevens, and that his claims were therefore barred under the issue preclusion doctrine. As a result, the district court granted respondents' motion. This appeal followed.

On appeal, Stevens initially challenges the merits of the district court's decision on two grounds. As to the first ground, Stevens argues that summary judgment was unwarranted because the underlying proceeding involved different claims than the federal action. But Stevens' argument in this regard fails, as it is directed at an element of the claim preclusion doctrine, rather than an element of the issue preclusion doctrine that the district court relied on in granting respondents summary judgment. See *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1052-56, 194 P.3d 709, 711-14 (2008) (discussing the claim and issue preclusion doctrines and setting forth the elements of each).

Turning to Stevens' second ground, he asserts that the district court should not have applied the issue preclusion doctrine under *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293 (2015), on the basis that federal courts use different procedures than state courts. But in discussing the issue preclusion doctrine in *B & B Hardware*, the United States Supreme Court explained that "[r]ather than focusing on whether procedural differences exist," courts should look to "whether the procedures used in the first proceeding were fundamentally poor, cursory, or unfair." 135 S. Ct. at 1309; see *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 482, 215 P.3d 709, 718 (2009) ("To determine the preclusive effect of a federal decision, we apply federal law."). And here, Stevens does not present any

challenge to the sufficiency of the procedures employed in the federal action. Thus, Stevens failed to show that relief is warranted on these grounds.²

Aside from the foregoing, Stevens asserts that because the district court clerk did not file his opposition to respondents' motion for summary judgment quickly enough or through the court's electronic filing system, the district court failed to consider his arguments set forth therein before entering its summary judgment order. But Stevens' assertion is unavailing, as his opposition was part of the record at the time the district court entered its summary judgment order, and that order expressly states that the court reviewed the record prior to making its decision. And to the extent that Stevens' arguments are directed at the district court clerk's filing procedures, our review of the record reveals nothing to support his assertions of impropriety. But even if we agreed with Stevens' assertions in this regard, relief would nevertheless be unwarranted in light of our disposition of this appeal. *See* NRCP 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.").

Lastly, Stevens argues that the outcome of the underlying proceeding would have somehow been different if, before ruling on

²Stevens presented additional argument regarding *B & B Hardware* in his opposition to respondents' motion for summary judgment. But insofar as Stevens attempts to incorporate that argument in his informal brief by reference, his effort is improper. *See* NRAP 28(e)(2) ("Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer [this court] to such briefs or memoranda for the arguments on the merits of the appeal.").

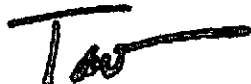
respondents' motion for summary judgment, the district court had addressed his motions for an extension of time to file an opposition thereto for certain discovery, and to appear at the summary judgment hearing via video conference. A review of the record reveals that Stevens filed each of these motions just eight judicial days before the scheduled hearing on respondents' motion for summary judgment, such that the ordinary briefing schedule could not be completed prior to the summary judgment hearing. *See* EDCR 2.20 (setting forth the briefing schedule for motions); *see also* NRCP 6(a) (explaining how to compute periods of time of less than 11 days). Yet Stevens failed to seek to have any of these motions heard on an order shortening time, which would have allowed the district court to address these matters prior to the summary judgment hearing. *See* EDCR 2.26 (authorizing requests for orders shortening time based on a showing of good cause). As a result, we discern no basis for relief on this ground.³

Given the foregoing, Stevens failed to demonstrate that the district court erred in granting respondents' motion for summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)

³We note that, by granting respondents' motion for summary judgment, the district court effectively denied Stevens' pending motions. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (concluding that a district court's failure to rule on a request constitutes a denial of that request). But in this regard, Stevens does not present any argument or explanation as to why any of these motions should have been granted. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider issues that are not supported by cogent argument).

(reviewing a district court's order granting summary judgment de novo).
Accordingly, we ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Theodore Stevens
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

⁴Having reviewed Stevens' remaining arguments, we discern no basis for relief. And insofar as Stevens requested relief in his informal brief beyond the reversal and remand of this matter, his requests are moot in light of our disposition of this appeal.