

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY JOHN BURRIOLA,  
Appellant,  
vs.  
RENEE BAKER, WARDEN; AND  
JAMES COX,  
Respondents.

No. 73410

**FILED**

AUG 10 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Anthony John Burriola appeals from a district court order dismissing his complaint in a civil rights action. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Burriola, an inmate, sued respondents for violation of his rights to due process and freedom from cruel and unusual punishment, alleging that he had been deprived of proper footwear. Before respondents could answer, Burriola filed an amended complaint, adding a claim relating to his confinement in disciplinary segregation and limitations on his telephone usage as a result of that confinement. *See* NRCP 15(a) ("A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . ."); *see also* *Randono v. Ballow*, 100 Nev. 142, 143, 676 P.2d 807, 808 (1984) (explaining that an amended complaint is a distinct pleading that supersedes the original complaint). Respondents

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subsequently moved for summary judgment, which the district court granted as to the footwear-related claims.


Burriola appealed that decision, but we dismissed the matter for lack of jurisdiction because the district court had not resolved his disciplinary segregation/telephone usage claim, and a claim therefore remained pending below. *Burriola v. Baker*, Docket No. 69401 (Order Dismissing Appeal, October 11, 2016). On remand, the district court looked to federal cases and related authority and concluded that, under NRCP 5, Burriola was required to serve his amended complaint pursuant to NRCP 4's rules governing service of process. Because the district court found that Burriola did not serve his complaint pursuant to NRCP 4's requirements, the court entered an order directing Burriola to show good cause for his failure to timely serve his amended complaint and requiring him to move for an extension of time to effect service of process. When the deadline identified in the district court's show cause order for Burriola to complete these steps subsequently passed without Burriola having taken any action, the district court dismissed his case for failure to comply with NRCP 5.


On appeal, Burriola presents several arguments as to why he believes the district court improperly dismissed his case under NRCP 5. But Burriola waived these arguments, as he did not raise them, or any other arguments, in response to the district court's show cause order, which expressly set forth the court's rationale for dismissing his case. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point

not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). As a result, we conclude that Burriola failed to demonstrate that relief is warranted in this regard. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Hon. Steve L. Dobrescu, District Judge  
Anthony John Burriola  
Attorney General/Las Vegas  
Attorney General/Carson City  
White Pine County Clerk

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<sup>1</sup>In light of our resolution of this matter, we need not address Burriola’s extensive arguments with regard to the merits of his claims and the district court’s original summary judgment order. And while we have reviewed Burriola’s remaining arguments and requests, we discern no basis for relief from them.