

Enclosure

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MANANCE

NOV 21 2009  
U.S. DISTRICT COURT  
BY: [Signature]

from a district court order  
Judicial District Court, Clark

in October 2008, Padilla, an inmate in the custody of the  
Department of Corrections (NDOC), filed a civil rights complaint  
allegation of his constitutional rights. In January 2009, he filed a  
temporary restraining order and/or preliminary injunction<sup>2</sup> and  
sought plaintiff's copy work and legal supplies limits waiver of  
each of the defendants.<sup>3</sup> Notably, neither of these documents  
were set for hearing and were likewise not set for hearing. In April  
2009, the district court issued an order to show cause why the case should  
not be dismissed for [redacted].

After the hearing in May 2009,  
the district court issued an order that Padilla did not appear at the  
hearing in response to the court's order  
dismissed the complaint without  
pursuant to NDCP 4. failure to  
comply is the court's inherent

order. This order

2007272

On appeal, Padilla challenges the district court's dismissal of his complaint, asserting that the NDOC failed to transport him to the hearing on the order to show cause and that the court erred in dismissing the complaint without first ruling on his pending motions. This court generally reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). However, 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).

A summons and complaint must be served on the named defendants within 120 days of filing, or the complaint must be dismissed without prejudice unless the plaintiff filed a motion to enlarge the time for service and shows good cause why service was not made during that period. NRCP 4(e).<sup>1</sup> Here, Padilla filed his complaint on October 30, 2018. Therefore, service was required no later than February 27, 2019, absent a motion demonstrating good cause to extend the time for service. At the time the district court issued its order to show cause in April 2019, and at the time the court entered its order dismissing the complaint in June 2019, Padilla had failed to properly serve the defendants or file a motion

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<sup>1</sup>On December 31, 2018, the Nevada Supreme Court amended the Nevada Rules of Civil Procedure, effective March 1, 2019. *See In re Creating a Comm. To Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rule of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Those amendments do not affect the disposition of this appeal, and thus, we cite to the current version of the NRCP.

demonstrating good cause to enlarge the time to do so.<sup>2</sup> Based on these facts, we cannot conclude that the district court abused its discretion in dismissing Padilla's complaint without prejudice. *See Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200; *see also* EDCR 1.90(b)(2) (requiring the district court to review its civil caseload for complaints not served within 180 days of filing and then dispose of or dismiss those cases).

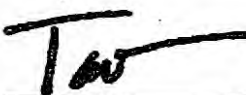
Moreover, on appeal, Padilla only argues that his complaint was improperly dismissed because the NDOC did not transport him to the show cause hearing and because the court did not rule on his motions. But regardless of Padilla's failure to appear and his outstanding filings, the district court also dismissed the complaint based on its inherent authority to do so. *See Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1020-21 (1974) (explaining that district courts have the inherent power to dismiss cases for failure to prosecute or to comply with its orders). Because Padilla failed to raise any arguments on appeal addressing dismissal pursuant to the court's inherent authority, he has waived any such challenge and we necessarily affirm the district court's dismissal on that basis. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").


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<sup>2</sup>To the extent Padilla's document entitled "motion to extend plaintiff's copy work and legal supplies limits waiver of service to each of the defendants" could be construed as seeking an enlargement of time, despite the fact that Padilla did not request additional time to serve in that document, he failed to properly set the matter for hearing before the district court. *See In re Suspending or Modifying Certain District Court Rules*, Admin. Order 19-03 (March 12, 2019) (suspending EDCR 2.20(b), which required a notice of motion, and instead requiring motions to designate "Hearing Requested" in the caption on the first page of the motion).

Based on the foregoing, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Joseph Hardy, Jr., District Judge  
Raymond Gean Padilla  
Attorney General/Carson City  
Eighth District Court Clerk