

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL J. VOLPICELLI,  
Appellant,  
vs.  
LORI INMAN,  
Respondent.

No. 45999

**FILED**

FEB 02 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court order dismissing an action for the recovery of personal property. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Ferrill Volpicelli filed a civil action in district court to recover the value of personal property that he claimed respondent Lori Inman, his ex-wife, wrongfully took from him upon his incarceration. Volpicelli contends that the property at issue is valued at \$9,000. The most expensive piece of property is a Rolex watch valued at \$3,000.

The parties proceeded in proper person in the district court. In 2006, after more than two years of litigation, Inman filed a motion to dismiss, attaching an affidavit authored by the appellant's son, Travis. In this affidavit, Travis stated that he collected his father's watch along with other personal effects from the Washoe County jail upon Volpicelli's arrest. Travis further stated that he pawned the Rolex watch and that no other person had possession of the watch at any time. Travis was not a party to the action below.

Volpicelli filed an opposition to the motion to dismiss. Although this opposition pointed out procedural deficiencies in the motion to dismiss, it did not refute the truthfulness of Travis' affidavit.

The district court treated the motion as one for summary judgment and concluded that no genuine issue of material fact supported Volpicelli's claim as to the Rolex watch and therefore dismissed that part of the complaint. The court then dismissed Volpicelli's remaining claims without prejudice after finding that the value of the remaining property (\$6,000) did not meet the jurisdictional requirement of the district court.

Volpicelli essentially raises two issues on appeal.<sup>1</sup> First, he contends that the district court improperly granted summary judgment as to the Rolex watch based upon Travis' affidavit. Second, he argues that the district court improperly dismissed the remainder of the complaint due to a lack of subject matter jurisdiction.

#### Summary judgment

This court reviews an order granting summary judgment de novo.<sup>2</sup> Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that no genuine issue as to any material fact exists such that the moving party is entitled to judgment as a matter of law.<sup>3</sup>

Volpicelli's only argument on appeal is that the district court violated his due process rights by converting Inman's motion to dismiss to

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<sup>1</sup>In his filings before this court, Volpicelli raised numerous assignments of error relating to the dismissal of his case. Taken as a whole, however, these allegations essentially present two issues on appeal.

<sup>2</sup>Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

<sup>3</sup>NRCP 56(e); see also Great American Ins. v. General Builders, 113 Nev. 346, 350-51, 934 P.2d 257, 260 (1997).

a motion for summary judgment. He argues that he was given no meaningful opportunity to oppose Inman's motion.

Volpicelli's claim lacks merit because it is clear from the record he was given "reasonable opportunity" to refute the allegations in Travis' affidavit. NRCP 12(c) provides:

If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Here, the district court chose to consider matters outside the pleadings and, therefore, properly converted Inman's motion to dismiss to a motion for summary judgment. Volpicelli was afforded an opportunity to rebut Inman's motion and filed an eight-page opposition to Inman's motion to dismiss, raising a number of procedural and legal arguments. However, Volpicelli failed to refute the truthfulness of Travis' affidavit. Consequently, there is simply no evidence in the record that Inman ever possessed the watch. As a result, we conclude that the district court properly determined that no genuine issue of material fact existed as to the Rolex watch and properly granted summary judgment.

Dismissal for lack of subject matter jurisdiction

After granting summary judgment as to the watch, the district court determined that the amount in controversy (\$6,000) was less than the jurisdictional requirement of the district court. As a result, the district court concluded it lacked subject matter jurisdiction to hear Volpicelli's remaining claims and dismissed his complaint without prejudice.

Volpicelli contends that the district court violated his due process rights because the statute of limitations has run on his claim and he therefore cannot refile in justice court. Actions involving injury to personal property are subject to a three-year statute of limitations.<sup>4</sup> According to Volpicelli's complaint, the events giving rise to this action took place shortly after he was incarcerated in October 2001, over five years ago. He argues that the dismissal effectively left him with no remedy for the loss of his other property.

First, Volpicelli's due process argument is meritless because his suit is not time barred. Under NRS 11.500(1)(b), a litigant whose timely filed action is later dismissed for lack of subject matter jurisdiction may recommence his or her suit in the proper court within 90 days of dismissal, regardless of the applicable statute of limitations.<sup>5</sup> Volpicelli, therefore, will have ample opportunity to refile his suit in justice court.

Second, we conclude that the district court acted within its discretion in dismissing Volpicelli's remaining claims. Article 6, Section 6 of the Nevada Constitution limits the original jurisdiction of the district courts to "cases excluded by law from the original jurisdiction of justices' courts." At the time relevant to this appeal, the justice courts had exclusive original jurisdiction over actions to recover personal property,

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<sup>4</sup>NRS 11.190(3)(c).

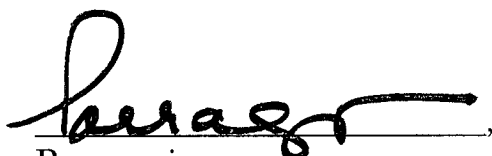
<sup>5</sup>There is one potentially applicable exception to this rule. NRS 11.500(3) states that "[a]n action may not be recommenced pursuant to [this statute] more than 5 years after the date on which the original action was commenced." Volpicelli's initial complaint was filed on June 4, 2003. As a result, the recommencement statute applies and he qualifies for the 90 day grace period. NRS 11.500(1)(b).

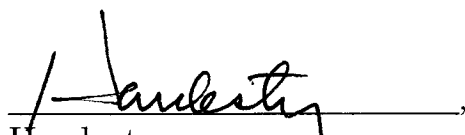
provided the amount in controversy did not exceed \$7,500.<sup>6</sup> Once the district court granted summary judgment as to the Rolex, the amount in controversy was clearly less than the jurisdictional minimum in district court. As a result, we conclude the district court properly dismissed the remainder of his claims.<sup>7</sup>

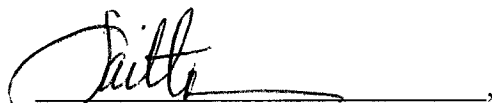
Conclusion

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Hardesty, J.

  
Saitta, J.

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<sup>6</sup>NRS 4.370(1)(e) (2001) (providing that justice courts have jurisdiction over “actions to recover the possession of personal property, if the value of the property does not exceed \$7,500”).

<sup>7</sup>NRS 3.221 permits the district court to transfer original jurisdiction over a case to the justice court if the “district judge determines that the action is properly within the jurisdiction of the Justice Court.” The language of the statute, however, makes it clear that the decision whether or not to transfer a case lies within the district court’s discretion.

cc: Hon. Brent T. Adams, District Judge  
Ferrill Joseph Volpicelli  
Lori Inman  
Washoe District Court Clerk