

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 99-2481

Robert D. McGrew,

Appellant,

v.

Ronald Hasty, Patrolman Ninth
District, in both individual and official
capacities,

Appellee.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: January 25, 2001

Filed: January 31, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Missouri inmate Robert D. McGrew appeals from the district court's¹ adverse ruling on a motion to dismiss in his action for damages and recovery of property. Having reviewed the district court's ruling de novo, we conclude that Mr. McGrew failed to avail himself of adequate post-deprivation remedies under Missouri law, e.g.,

¹The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

an action for replevin, conversion, or return of stolen property. See Mo. Rev. Stat. § 542.301.1(1) (Supp. 1998); Hudson v. Palmer, 468 U.S. 517, 529-30 (1984); Harris v. St. Louis Police Dep't, 164 F.3d 1085, 1086 (8th Cir. 1998) (per curiam); Perez v. Boatmen's Nat'l Bank of St. Louis, 788 S.W.2d 296, 299 (Mo. Ct. App. 1990). Mr. McGrew argues that the state court has rejected his attempts to file a replevin action, but we do not address this argument because he did not raise it below and he supports it with evidence that was not before the district court. See Crawford v. Runyon, 79 F.3d 743, 744 (8th Cir. 1996); Ryder v. Morris, 752 F.2d 327, 332 (8th Cir.), cert. denied, 471 U.S. 1126 (1985).

We deny Mr. McGrew's pending motion, but we modify the dismissal of his state law claims to be without prejudice, see Labickas v. Ark. State Univ., 78 F.3d 333, 334-35 (8th Cir.) (per curiam), cert. denied, 519 U.S. 968 (1996). In all other respects, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.