

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ANDRE BAZILE,
Appellant,
vs.
DWIGHT NEVEN; GREG COX; JOHN
DOE PORTER; AND WILLIAM
VENNEMAN,
Respondents.

No. 48346

FILED

MAR 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. B. Bloom*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court dismissal order in a tort action. Eighth Judicial District Court, Clark County; Noel E. Manoukian, Senior Judge.

Appellant filed a complaint in the district court, seeking compensatory and punitive damages based on allegations that prison corrections officers had confiscated from his cell his personal property, namely a surge protector, without proper notification. Appellant acknowledged that prison officials had explained that the surge protector was not permitted, but appellant argued that, under the prison's administrative regulations, he had a right to be notified and a right to decide whether to send it home, donate it to charity, or have it discarded.

In their motion to dismiss, respondents argued, among other things, that (1) because appellant's action was brought against state employees, appellant was required to name the state as a defendant, (2) the district court lacked jurisdiction because appellant's claims could not exceed the court's \$10,000 jurisdictional threshold, and (3) respondents were immune from liability for damages. Appellant filed a motion,

requesting additional time to file an opposition, which the court granted, allowing appellant an additional forty-five days. Appellant failed to file his opposition but, at a scheduled hearing, he requested more time to oppose the motion. The court apparently denied appellant's second request for additional time and, noting that punitive damages are not permitted against the state, it granted the motion to dismiss. Appellant appeals.

On appeal, appellant argues that the district court erred by granting the motion without allowing him more time to file an opposition. Appellant contends that the act of discarding the surge protector was ministerial, not discretionary and, even though the surge protector was worth less than \$14.00, the district court had jurisdiction because appellant's complaint was grounded on "wrongful acts" and included a request for punitive damages, which the court could grant since respondents were not acting within the scope of their duties when they discarded the surge protector.

This court's review of the order dismissing appellant's complaints is rigorous,¹ as this court, in determining whether appellant set forth allegations sufficient to state a claim for relief,² accepts all factual allegations in his complaint as true and construes all inferences in

¹Vacation Village v. Hitachi America, 110 Nev. 481, 874 P.2d 744 (1994).

²Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

his favor.³ Accordingly, appellant's complaint was properly dismissed only if his allegations would not entitle him to any relief.⁴

In this case, appellant failed to name an indispensable party, the state.⁵ Appellant also failed to meet the district court's jurisdictional damages threshold and, therefore, dismissal was proper.⁶ In particular, appellant requested \$5,000.01 each in general and special damages, compensatory damages, actual damages, and punitive damages, but he failed to include a basis for his damages requests. There was, however, no basis for punitive damages⁷ or for special damages, such as attorney fees

³See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

⁴Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).


⁵NRS 41.0337 (providing that no tort action arising out of an act within a State employee's public duties or employment may be brought against that employee unless the state is named a party defendant under NRS 41.031); see also NRS 209.101 (creating the Nevada Department of Corrections as a state department); NRS 41.031(2) (providing that any action against the State "must be brought in the name of the State of Nevada on relation of the particular department . . . of the State whose actions are the basis for the suit").

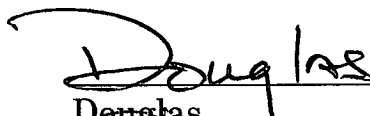
⁶See Nev. Const. art. 6, § 6 (providing that district courts do not have original jurisdiction over actions that fall within the justices courts' original jurisdiction); NRS 4.370 (conferring original jurisdiction upon the justices courts over civil actions for damages, if the damages claimed do not exceed \$10,000); Morrison v. Beach City LLC, 116 Nev. 34, 37-38, 991 P.2d 982, 983-84 (2000) (explaining that, in deciding whether subject matter jurisdiction exists based on the damages threshold, the district court may look beyond the damages claimed and evaluate whether those damages were claimed in good faith).

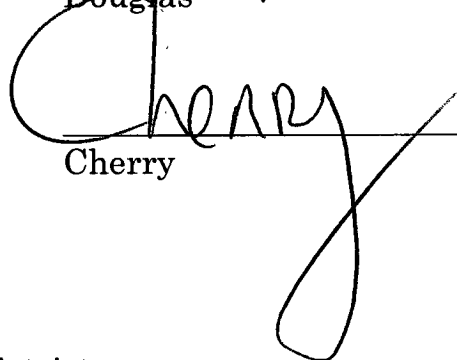
⁷NRS 41.035.

and, although appellant asserted separate claims for “compensatory,” “general,” and “actual” damages, all of those claims are based on the loss of property, i.e., the surge protector, which appellant concedes was less than \$14.00.⁸ Accordingly, because we conclude that appellant’s complaint stated no allegations upon which relief could be granted, we affirm the district court’s dismissal order.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Chief Judge, Eighth Judicial District
Hon. Noel E. Manoukian, Senior Judge
John Andre Bazile
Attorney General Catherine Cortez Masto/Las Vegas
Eighth District Court Clerk

⁸See Morrison, 116 Nev. at 38, 991 P.2d at 984 (noting that dismissal for lack of subject matter jurisdiction is appropriate when the district court determines “to a legal certainty that the [damages are] worth less than the jurisdictional amount”).