

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY HARRIS,
Appellant,
vs.
THE STATE OF NEVADA; MARI
HENRY; AND DON POAG,
Respondents.

No. 64819

FILED

JUN 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a civil rights action. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Appellant, an inmate, filed an action accusing respondents of retaliating against him for practicing his religion by requiring him to choose between receiving a low-sodium medical diet and observing the religious fast during Ramadan in 2012.¹ Respondents then moved for summary judgment, asserting that appellant could not demonstrate a

¹Appellant also asserted respondents were negligent and were deliberately indifferent to his serious medical needs. On appeal, he fails to challenge the denial of those claims or the dismissal of the Nevada Department of Corrections from the underlying action as an improper party. Thus, appellant has waived these arguments, and we do not address them further in this order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. ___, ___ n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party are deemed waived).

genuine issue of material fact as to either a retaliation claim or a free exercise claim. Over appellant's opposition, the district court granted respondents' motion for summary judgment. This appeal followed.

Within limits imposed based on legitimate penological interests, inmates enjoy the protections of the First Amendment of the United States Constitution, including its restriction against prohibiting the free exercise of religion. *Shakur v. Schriro*, 514 F.3d 878, 883-84 (9th Cir. 2008). Here, appellant argues his free exercise rights were violated because he was required to choose between practicing his religion by observing Ramadan and maintaining his health by eating a low-sodium diet.

The United States Court of Appeals for the Ninth Circuit has suggested that adverse health effects resulting from the options available to an inmate for practicing his religion may be relevant to whether the inmate's exercise of religion was impeded. *Cf. id.* at 889 (considering an inmate's claim that the failure to provide a particular diet violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1 (2006)). In this case, however, the record demonstrates that respondent Don Poag, the director of nursing at Lovelock Correctional Center, advised appellant he could safely participate in Ramadan, even though doing so would require him to forgo his low-sodium diet until the fast had ended. Moreover, appellant presented no evidence to contradict this advice or otherwise show that eating the diet provided for Ramadan created any health risks for him.


Indeed, appellant did participate in Ramadan, during which his blood pressure was monitored, and no significant variations were detected. Thus, there is no evidence in the record demonstrating that appellant was required to choose between maintaining his health and practicing his religion. As a result, the district court properly granted respondents summary judgment on appellant's free exercise claim. *See id.* at 889 (citing with approval an unpublished Ninth Circuit case in which the court affirmed the grant of summary judgment on an inmate's diet-based free exercise claim where the inmate could not identify any adverse physical effects caused by the religious diet).


Further, to the extent appellant argues he was retaliated against for practicing his religion, stating a claim for retaliation requires a prisoner to show, among other things, that "a state actor took adverse action against the prisoner." *Angel v. Cruse*, 130 Nev. ___, ___, 321 P.3d 895, 898 (2014). Although appellant's claim is not clearly stated, the only potentially adverse action appellant discusses is the requirement that he choose between the low-sodium diet and the diet provided for Ramadan. As addressed above, however, this choice did not violate appellant's right to freely exercise his religion, and appellant has not asserted any other way in which this choice may have been considered an adverse action. As appellant has not identified any adverse action taken against him, the

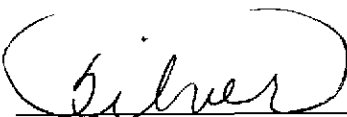
district court properly granted respondents summary judgment on appellant's retaliation claim.² *See id.*

Thus, for the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Sixth Judicial District Court, Dept. 1
Gregory L. Harris
Attorney General/Carson City
Pershing County Clerk

²Because we conclude appellant's rights were not violated, we need not address the arguments raised in his civil appeal statement asserting that a dispute exists as to whether respondents had a retaliatory motive or whether respondents demonstrated that their actions served a legitimate penological interest.