

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID AUGUST KILLE, SR.,
Appellant,
vs.
C/O JENKINS; CELIA CHACON;
DWAYNE BAZE; GAIL WATERS;
ROBERT LEGRAND, WARDEN; JACK
PALMER; DON HELLING; LORI
BAGWELL; HOWARD SKOLNIK; AND
THE STATE OF NEVADA,
Respondents.

No. 65300

FILED

JUN 24 2015

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

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing a torts complaint. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Appellant, an inmate, filed a torts complaint against the State of Nevada and certain employees of the Nevada Department of Corrections (NDOC) pursuant to NRS Chapter 41. Respondents then moved to dismiss the complaint, alleging the district court did not have subject matter jurisdiction over the case as appellant failed to name the department whose actions formed the basis of the complaint, as required by NRS 41.031. The district court subsequently granted the motion, finding that it lacked subject matter jurisdiction over the complaint. This appeal followed.

A district court may properly grant a motion to dismiss when the lack of subject matter jurisdiction is apparent on the face of the complaint. *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate*

Ins. Co. v. Thorpe, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007). Whether a court has subject matter jurisdiction over a complaint is a question of law which we review de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

On appeal, appellant first argues the district court erred in dismissing his case due to a lack of jurisdiction when respondents had already consented to jurisdiction in their answer. Even if we were to accept appellant's characterization of the language used in respondents' answer, this argument would fail because the case was dismissed for lack of subject matter jurisdiction, which "can be raised by the parties at any time . . . and cannot be conferred by the parties." *Landreth v. Malik*, 127 Nev. ___, ___, 251 P.3d 163, 166 (2011) (quoting *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990)). Thus, reversal is not warranted on this ground.

Appellant next argues the district court erred in dismissing his complaint for failure to name the State of Nevada on relation of the particular agency whose actions form the basis of the complaint as required by NRS 41.031(2). In this case, that agency would be the NDOC. Specifically, appellant asserts that because Nevada is ultimately responsible for all state employees, suing the State of Nevada implicitly includes suing NDOC. He similarly asserts that by naming the director of the NDOC, Howard Skolnick, as a defendant, he implicitly sued the NDOC. Appellant's arguments, however, ignore the clear plain language of NRS 41.031(2), which provides that if an action is brought against the State of Nevada, it "must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit." *See Beazer*

Homes Nev., Inc. v. Eighth Judicial Dist. Court, 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004) (providing that courts are to apply a statute's plain language if that language is unambiguous).¹ Here, appellant does not dispute that he failed to name the particular department whose actions formed the basis of his complaint and this failure is apparent from the face of the complaint, making dismissal proper. See *Rosequist*, 118 Nev. at 448, 49 P.3d at 653. Under these circumstances, appellant's arguments fail to demonstrate the dismissal was in error. See *Ogawa*, 125 Nev. at 667, 221 P.3d at 704.

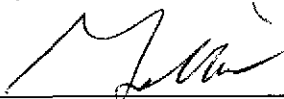
Finally, appellant asserts that the district court judge is biased against him due to appellant filing recusal motions in two other cases before the judge, and that the judge retaliated against him for filing those recusal motions by signing the dismissal order in this case. Because


¹Within his argument, appellant asserts NRS 41.0337 merely requires the State of Nevada or a particular department to be named as a defendant, not both. NRS 41.0337, however, provides that no torts action may be brought against state employees for acts within their public duties "unless the State or appropriate *political subdivision* is named a party defendant under NRS 41.031." (Emphasis added). Thus, NRS 41.0337 refers to a political subdivision, such as a county, and does not affect NRS 41.031(2)'s requirement that if the action is brought against the State of Nevada, rather than a political subdivision, it must also be brought on relation of the particular state department whose actions are being challenged. See NRS 41.031(2) (providing that an action may be brought "against the State of Nevada or any political subdivision of the State," and adding that, when an action is brought against the State, it "must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit"). Similarly, although appellant correctly asserts that Nevada has waived its sovereign immunity under NRS 41.031, that waiver does not negate NRS 41.031(2)'s requirement that a particular state department be named.


appellant never properly sought to disqualify the district court judge by filing a timely affidavit specifying the basis for the disqualification, he has waived this issue, and thus, we will not consider it in resolving this appeal. See NRS 1.235(1) (requiring a party seeking disqualification of a district court judge to file an affidavit detailing the facts demonstrating that disqualification is necessary before the hearing of any pretrial matter); *Brown v. Fed. Sav. & Loan Ins. Corp.*, 105 Nev. 409, 412, 777 P.2d 361, 363 (1989) (explaining that a party waives the issue of disqualification on appeal if the party does not request disqualification within the time limitations set by NRS 1.235(1)).

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Sixth Judicial District Court, Dept. 1
David August Kille, Sr.
Attorney General/Carson City
Pershing County Clerk