IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY LYNN O'NEAL,
Appellant,
vs.
JUVENILE MASTER LU; KEVIN SCHILLER; JEAN MARSH; OTTO LYNN; TAMMY WILLIAMSEN; KASIE SCHWIN; LISA FOELSCH; REBECCA LANKFORD; MELONY ELAM; BRIAN SANDOVAL; EGAN WALKER; ELEN CRECELIUS; AMBER JOINER; KAREN MASTERS; AMBER HOWELL; RICHARD WHITLEY; STEVEN PITTS; MICHAEL HALEY; JAMES PITSNOGLE; JESSICA SHEPPARD; JEFFREY MARTIN; CHRISTOPHER JORDAN; RICHARD A. GAMMICK; TYLER ELCANO; ALISON TESTA; BUFFY BROWN; VERONICA CHAVEZ; JOSEPH HAAS, PH.D.; BERT WELLS; CYNTHIA WASHBURN; SUSAN VIAL; TERRI HUMES; SIMON KATY; JOHN BERKICH; NANCY LOWE; PEDRO MARTINEZ; AUCOIN JONNA; SHERRIE BETTS; ROBERT LARKIN; BONNIE WEBER; JIM GALLOWAY; KITTY JUNG; DAVID HUMKE; DAVE CHILDS; JESSICA LONGLEY; MICHAEL MILDEN,
Respondents.

No. 67128

FILED
NOV 19 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a torts action. Second Judicial District Court, Washoe County; Steven Elliott, Judge.

15-901463

Appellant filed a complaint against the 46 listed respondents alleging claims of abuse of process, aiding and abetting, negligence per se, and fraud. Appellant's allegations all stem from an incident occurring at a hotel casino in Reno, where appellant's wife was detained by casino security and was eventually arrested for trespassing. At the time, appellant's children were playing in the casino's arcade, and, due to their mother's arrest, were placed in the custody of Washoe County officials.

Appellant's first amended complaint alleged respondents failed in their duty to contact him following his wife's arrest so that he could pick the children up, failed to serve him with proper notice of the hearing regarding the children, made false reports and filed false affidavits regarding the incident, and improperly arrested his wife. His complaint further relied on many of these allegations to support an additional claim for abuse of process. The district court later granted motions to dismiss as to some respondents, and then, following the filing of a second amended complaint, granted the remaining respondents' motions to dismiss. During that time, the district court also denied appellant's additional motions to amend his complaint. After the district court dismissed the final respondent, this appeal followed.

On appeal, appellant generally argues that the district court erred in granting the motions to dismiss and abused its discretion in denying appellant's final motion to amend his complaint.[1] Although

[1]From his civil appeal statement, it appears that appellant is only challenging the denial of his most recent motion to amend, and, thus, that is the only one we will address in this order.

appellant's specific statements of error are difficult to discern, we have reviewed the district court's dismissal orders and the record before us alongside his civil appeal statement and conclude that the district court did not err in dismissing the underlying case as to each of the respondents. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that NRCP 12(b)(5) motions to dismiss are reviewed de novo). We further conclude that the district court did not abuse its discretion in denying appellant's final motion to amend his complaint. *See Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC*, 129 Nev. ___, ___, 300 P.3d 124, 130-31 (2013) (providing that, although leave to amend should be freely given under NRCP 15(a), appellate courts should not disturb a lower court's decision regarding amendment absent an abuse of discretion). Therefore, for the reasons discussed below, we affirm the district court's orders in all aspects.

Dismissal of appellant's claims

The dismissal of a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. All legal conclusions are reviewed de novo. *Id.*

As an initial matter, the district court dismissed 35 of the 47 respondents to this matter based on appellant's failure to timely oppose

these parties' motions to dismiss.[2] *See* WDCR 12(2) (providing ten days for a party to file an opposition to a motion); DCR 13(3) ("Failure of the opposing party to serve and file his written opposition [to a motion] may be construed as an admission that the motion is meritorious and a consent to granting the same."). On appeal, appellant does not dispute that the dismissal of these parties based on his failure to oppose their motions to dismiss was proper. As a result, we necessarily affirm the district court's dismissal of appellant's claims against these 35 respondents on that basis. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that arguments not raised in an opening brief are waived on appeal).

Regarding respondents Juvenile Hearing Master Cynthia Lu and Judge Egan Walker, the district court found that, because appellant's allegations pertaining to these parties were related to their actions as judicial officers, they were entitled to absolute judicial immunity. As a result, the district court dismissed the claims against them on this basis. On appeal, appellant appears to assert that Hearing Master Lu's decision to hear the matter regarding appellant's children was improper because the court was aware that appellant had not been provided with proper notice of that hearing. Appellant, however, makes no specific arguments

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[2]Specifically, the district court dismissed respondents Brian Sandoval, Michael Milden, Elen Crecelius, Amber Joiner, Karen Masters, Amber Howell, Richard Whitley, Richard Gammick, Michael Haley, Katy Simon, Cynthia Washburn, Susan Vial, Robert Larkin, Jim Galloway, David Humke, Bonnie Weber, Kitty Jung, David Childs, Jeffery Martin, Alison Testa, Tyler Elcano, Kevin Schiller, Veronica Chavez, Jean Marsh, Lynn Otto, Tammy Williamson, Kasie Schwin, Lisa Foelsch, Jessica Longley, Rebecca Lankford, Melony Elam, Jessica Sheppard, Joseph Haas, Terri Humes, and John Berkich on this basis.

regarding Judge Walker's dismissal. We conclude the district court properly applied judicial immunity to dismiss the complaint against these respondents. *See Marvin v. Fitch*, 126 Nev. 168, 173, 232 P.3d 425, 428 (2010) (stating that whether a party is entitled to absolute immunity is a question of law reviewed de novo).

Judicial immunity "'provide[s] absolute immunity from subsequent damages liability for all persons—governmental or otherwise—who [are] integral parts of the judicial process.'" *State v. Second Judicial Dist. Court*, 118 Nev. 609, 615, 55 P.3d 420, 424 (2002) (second alteration in original) (quoting *Briscoe v. LaHue*, 460 U.S. 325, 335 (1983)). Here, appellant's allegations against these respondents were based on actions they performed in their capacity as judicial officers, and, as such, they are entitled to absolute immunity for those actions, even if their actions were malicious, as appellant alleges. *See id.* (providing that "a grant of absolute immunity applies even when a judicial officer has been accused of acting maliciously and corruptly"). Accordingly, the district court did not err in dismissing appellant's action as to these respondents based on absolute judicial immunity. *See Marvin*, 126 Nev. at 174, 232 P.3d at 429 ("Absolute immunity protects judicial officers from collateral attack and recognizes that appellate procedures are the appropriate method of correcting judicial error."); *see also Second Judicial Dist.*, 118 Nev. at 615, 55 P.3d at 423 ("Absolute immunity is a broad grant of immunity not just from the imposition of civil damages, but also from the burdens of litigation, generally.").

Turning to the district court's dismissal of appellant's complaint as to respondent Buffy Brown, the court-appointed attorney for appellant's children, on quasi-judicial immunity grounds, we likewise

affirm this determination. Quasi-judicial immunity is "extended to individuals who perform functions integral to the judicial process." *Second Judicial Dist.*, 118 Nev. at 616, 55 P.3d at 424. The Nevada Supreme Court has previously applied quasi-judicial immunity to a Court Appointed Special Advocate who represented two minor children in a custody case because the advocate aided the court in its judicial function, and thus was integral to the judicial process. *Foster v. Washoe Cty.*, 114 Nev. 936, 944, 964 P.2d 788, 793 (1998). The supreme court further concluded that not providing absolute immunity to such advocates would likely deter people from accepting such appointments in the future. *Id.* Similar to the advocate in *Foster*, it appears that Brown was appointed by the court to assist the court in its duties of protecting appellant's children and was thus integral to the judicial process. As a result, Brown is entitled to absolute quasi-judicial immunity, *see id.*, and the district court therefore did not err in dismissing the complaint as to Brown on this basis. *See Marvin*, 126 Nev. at 173, 232 P.3d at 428.

With regard to the district court's dismissal of respondents Steven Pitts, James Pitsnogle, Christopher Jordan, and Bert Wells, these parties were dismissed on the basis that appellant failed to properly state a claim upon which relief could be granted. In his civil appeal statement, however, appellant fails to make cogent arguments asserting that the dismissal of these parties on this basis was not proper. Instead, he makes only vague arguments asserting that all of the respondents purportedly broke various laws. In light of appellant's failure to provide cogent arguments regarding the basis for the district court's dismissal of these respondents, we necessarily affirm that decision. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38

(2006) (providing that this court need not address claims that are not cogently argued on appeal).[3]

Denial of Leave to Amend

Appellant next argues that the district court improperly denied his motion to amend his second amended complaint. In denying the motion, the district court stated that appellant had already amended his complaint once with leave of court, that all but one respondent had been dismissed, and that respondents would be prejudiced if appellant was allowed to amend his complaint at that late juncture. On appeal, appellant argues that this denial was an abuse of discretion because the proposed amended complaint included additional facts not mentioned in the first two complaints, although he does not identify these newly alleged facts. We review a decision resolving a motion to amend a complaint for an abuse of discretion. *See Holcomb*, 129 Nev. at ___, 300 P.3d at 130-31.

Under NRCP 15(a), a district court may grant leave to amend when justice so requires. A denial may be warranted, however, if undue

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[3]Appellant does not make any specific arguments on appeal regarding the dismissal of respondents Pedro Martinez, Joanna AuCoin, Nancy Lowe, and Sherrie Betts. As a result, we conclude that appellant has waived any challenge to the dismissal of these parties and we therefore affirm the dismissal of these respondents. *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

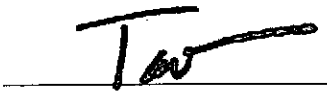
During the course of the underlying proceedings, appellant purported to add additional parties to the action and served the complaint on certain unnamed parties without seeking leave to add those individuals as parties. Because these individuals were never properly added as parties to the underlying matter, we do not address appellant's efforts to include them in the underlying case in resolving this appeal.

delay, bad faith, or dilatory motives are involved. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). We conclude that, under the circumstances presented here, the district court did not abuse its discretion in denying appellant's motion to amend because granting such a motion would cause undue delay in the action as all but one of the 46 named defendants had already been dismissed based on appellant's first and second amended complaints. *See id.*; *see also Holcomb*, 129 Nev. at ___, 300 P.3d at 130-31. Therefore, we affirm that decision as well.

Accordingly, because the district court did not err in dismissing respondents from this case and because it did not abuse its discretion in denying appellant's motion to amend, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

[4]Because we are affirming the district court's decisions, appellant's request that a different judge be assigned to the case on remand is moot. *See Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 394, 594 P.2d 1159, 1162 (1979) (stating that the duty of appellate courts is to resolve actual controversies and not to opine on moot questions or abstract propositions).

cc: Hon. David Hardy, Chief Judge
Hon. Steven Elliott, Senior Judge
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