

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN BRADLEY HODGES,  
Appellant,  
vs.  
JOSHUA BARFIELD; JAMES LESTER;  
TIMOTHY FILSON, WARDEN; JAMES  
DZURENDA, DIRECTOR; AND THE  
STATE OF NEVADA,  
Respondents.

No. 73678

FILED

MAR 28 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Steven Bradley Hodges appeals from a district court order dismissing a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Hodges contends that respondents, in their official and individual capacities, violated his due process rights under the Fourteenth Amendment by failing to allow him to exchange three confiscated music CDs. Specifically, Hodges asserts that his due process rights were "chilled" when respondents advised him that his opportunity to exchange the CDs had passed, while his grievance was still pending. The district court dismissed the underlying civil rights complaint for failure to state a claim on which relief could be granted and this appeal followed. Having considered the record and Hodges' informal brief, we conclude that the district court did not err in dismissing the instant action.

First, to the extent Hodges has named the State of Nevada and state officials acting in their official capacities, his civil rights complaint pursuant to 42 U.S.C. § 1983 fails. As relevant here, "neither states nor their officials acting in their official capacities are persons under 42 U.S.C. § 1983 and therefore neither may be sued in state courts under the federal

civil rights statutes.” See *N. Nev. Ass’n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 114, 807 P.2d 728, 732 (1991) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989)).

With regard to Hodges’ remaining claim against respondents in their individual capacities, the district court concluded that Hodges’ complaint failed to state a claim upon which relief could be granted because the State provided an adequate post-deprivation remedy, and the due process clause was not implicated. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). This court will affirm the decision to dismiss a complaint under NRCP 12(b)(5) when the complaint’s factual allegations do not entitle a plaintiff to relief under the claims asserted. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.


Based on our review of the record, we agree that, even taking Hodges’ allegations as true, his complaint fails to state a claim upon which relief can be granted. See *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (providing that even “an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available”). As the district court concluded, if Hodges was improperly deprived of his property, he had an adequate post-deprivation remedy available in the form of a civil action against the state. See NRS 41.031; NRS 41.0322. Therefore, he cannot state a due process claim. See *Hudson*, 468 U.S. at 533. Further, to the extent Hodges baldly asserts that he was deprived the right to appeal the improper denial of his property, he fails to make any cogent argument

as to how he was deprived of such a right, and the record reflects that respondents and the district court based their positions on the assertion that Hodges could, in fact, pursue other civil remedies. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (concluding that this court need not consider claims that are not cogently argued).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James Todd Russell, District Judge  
Steven Bradley Hodges  
Attorney General/Carson City  
Attorney General/Las Vegas  
Carson City Clerk