

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD E. MITCHELL, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA; THE STATE  
OF NEVADA DEPARTMENT OF  
CORRECTIONS; AND STACY  
BARRETT,  
Respondents.

No. 73051

**FILED**

FEB 27 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Donald E. Mitchell, Jr., appeals from a district court order dismissing in part and granting summary judgment in part on his civil rights complaint.<sup>1</sup> Eighth Judicial District Court, Clark County; James Crockett, Judge.

Mitchell filed a civil rights complaint against respondents, the State of Nevada, the State of Nevada Department of Corrections and Stacy Barrett, alleging First Amendment retaliation claims. Respondents subsequently moved to dismiss the complaint, or in the alternative, for summary judgment. Over Mitchell's opposition, the district court granted

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<sup>1</sup>Because defendant Francis Appah was never served and never made an appearance in the district court, he never became a party to the case, and thus, is not a proper party to this appeal. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who is not served with process and does not make an appearance in the district court is not a party to that action). We therefore direct the clerk of the court to amend the caption of this case to conform to the caption on this order by removing Appah from the caption for this matter.

summary judgment, finding as one of the grounds for summary judgment that Mitchell failed to properly exhaust the grievance process prior to filing the complaint as required by the Prison Litigation Reform Act of 1996 (PRLA). The district court also dismissed the State of Nevada and the Nevada Department of Corrections after finding they were not proper persons for the purposes of 42 U.S.C. § 1983. This appeal followed.

On appeal, Mitchell does not present any arguments addressing the above-referenced grounds relied on by the district court to resolve the underlying action. Therefore he has waived any such challenge. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived). As a result, we necessarily affirm the district court's order.

It is so ORDERED.

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

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

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

cc: Hon. James Crockett, District Judge  
Donald E. Mitchell, Jr.  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk