

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK DAVID NEMETH,
Appellant,
vs.
NEVADA BOARD OF PAROLE
COMMISSIONERS; BRIAN WILLIAMS,
WARDEN; AND JAMES DZURENDA,
NDOC DIRECTOR,
Respondents.

No. 74496-COA

FILED

JAN 16 2013

ELIZABETH A. STONER
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mark David Nemeth appeals from a district court order dismissing a civil rights and torts action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.


In the proceedings below, Nemeth filed a complaint pursuant to 42 U.S.C. § 1983 and NRS 41.0322, asserting that respondents violated his due process rights at his parole revocation hearing. The district court dismissed the complaint for failure to state a claim and failure to timely serve the complaint. This appeal followed. Having considered the record and Nemeth's informal brief, we conclude that the district court did not err in dismissing the instant action.

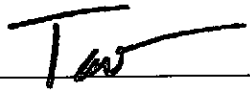
First, Nemeth's complaint named all respondents as defendants in their official capacities. Accordingly, his civil rights complaint pursuant to 42 U.S.C. § 1983 fails. As relevant here, "neither states nor their officials acting in their official capacities are persons under 42 U.S.C. § 1983 and therefore 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)).

Additionally, to the extent Nemeth's complaint asserts a cause of action pursuant to NRS 41.0322, the district court correctly determined that Nemeth failed to serve the defendants within the 120-day time period required by NRCP 4(i). Nemeth concedes that service was untimely, but contends that respondents were not prejudiced by the delay. However, NRCP 4(i) requires dismissal when service is not made within 120 days of the complaint being filed, unless the plaintiff moves to enlarge the service period. Absent a motion to extend the service period, and good cause, the district court lacks discretion to enlarge the service period. *See Saavedra-Sandoval v. Walmart Stores, Inc.*, 126 Nev. 592, 596, 245 P.3d 1198, 1201 (2010). Because service was untimely and Nemeth never filed a motion to extend time for service, dismissal was required. *See id.*; NRCP 4(i).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

¹We note that Nemeth filed a request for the preparation of transcripts. In light of our resolution of this matter, we conclude that the preparation of transcripts is unnecessary. *See* NRAP 9(b)(1)(C).

cc: Hon. Linda Marie Bell, Chief Judge
Mark David Nemeth
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk