

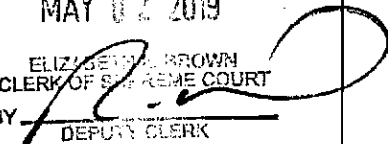
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER LOWRY,  
Appellant,  
vs.  
SARG. C/O LINDBURG,  
Respondent.

No. 77264-COA

FILED

MAY 02 2019

ELIZABETH BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Christopher Lowry appeals from a district court order dismissing a civil rights complaint. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Lowry, an inmate, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against respondent Sarg. C/O Lindburg and Lovelock Correctional Center.<sup>1</sup> Lindburg moved to dismiss for lack of subject matter jurisdiction and personal jurisdiction, arguing that under NRS 41.031 and NRS 41.0337 Lowry failed to properly invoke the State's waiver of sovereign immunity and failed to properly effect service. Lowry filed an opposition and sought leave to amend. The district court denied leave to amend and

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<sup>1</sup>Lovelock Correctional Center does not appear to have been served and did not make an appearance in the district court. As such, it never became a party to the case, and thus, it 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.

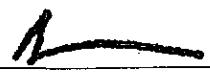
granted the motion to dismiss, finding it lacked both subject matter and personal jurisdiction. This appeal followed.

Determinations of subject matter jurisdiction and personal jurisdiction are subject to de novo review. *See Craig v. Donnelly*, 135 Nev. \_\_\_, \_\_\_, \_\_\_ P.3d \_\_\_, \_\_\_ (2019); *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014). Here, a review of the complaint reveals that Lowry named Lindburg in his individual capacity and only brought 42 U.S.C. § 1983 claims against him, not any state tort claims. As such, he did not need to comply with the naming or service requirements of NRS 41.031 and NRS 41.0337 and dismissal based upon failure to comply with those provisions was improper.<sup>2</sup> *See Craig*, 135 Nev. at \_\_\_, \_\_\_ P.3d at \_\_\_. We therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

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<sup>2</sup>In light of the disposition of this appeal, we need not address Lowry's arguments regarding the denial of leave to amend his complaint.

<sup>3</sup>Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of this case, and thus, no such brief has been ordered.

cc: Hon. Jim C. Shirley, District Judge  
Christopher Lowry  
Attorney General/Las Vegas  
Pershing County Clerk