IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODNEY MCGUIRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79249-COA

ORDER OF AFFIRMANCE

Rodney McGuire appeals from a district court order dismissing a petition for termination of the duty to register as a sex offender. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

McGuire was registered under Nevada's previous sex offender law, commonly known as Megan's Law. The Nevada Legislature replaced Megan's Law in 2007 by adopting the Adam Walsh Child Protection and Safety Act (the AWA). Nevertheless, in 2016, several sex offenders successfully petitioned for relief from the duty to register by combining or "commingling" certain provisions of Megan's Law and the AWA.

In the underlying proceeding, McGuire argued that he was entitled to relief from his obligation to register as a sex offender based on the same commingling approach even though the Nevada Supreme Court had recently determined, in *State, Department of Public Safety v. Neary*, Docket No. 72578 (Order of Reversal and Remand, July 26, 2018), that Megan's Law and the AWA cannot be commingled. Specifically, McGuire argued that the State's enforcement of that holding violated his right to

equal protection. McGuire reasoned that because the State inexplicably allowed the 2016 petitioners to commingle these statutory schemes, its refusal to allow him to do the same was intentionally different treatment without a rational basis.

The district court dismissed McGuire's petition, finding that it lacked jurisdiction to hear the matter because he failed to name the State of Nevada, Department of Public Safety as a defendant in accordance with NRS 41.031(2). Moreover, although McGuire sought leave to amend his complaint, the district court concluded that amendment would be futile since his equal protection argument did not provide a basis for relief. In particular, the district court reasoned that the State had a rational basis for refusing to allow further comingling because the legislature intended the AWA to replace Megan's law. This appeal followed.

On appeal, McGuire does not dispute that he created a jurisdictional impediment to the district court hearing his petition by failing to name the State of Nevada, Department of Public Safety as a defendant. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). But McGuire reiterates his equal protection argument from below, and in that way, he seemingly contends that amending his complaint to correct its caption would not have been futile. We disagree since, as discussed below, the district court correctly determined that McGuire's equal protection argument did not provide a basis for relief.

The Fourteenth Amendment of the United States Constitution and Article 4, Section 21, of the Nevada Constitution guarantee the right to equal protection. *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812,

817 (2005). A party may bring a class-of-one equal protection claim showing that he or "she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

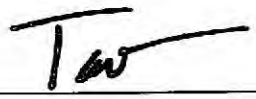
In this regard, McGuire specifically asserts that the State "simply decided" to treat him differently than the sex offenders who successfully commingled the statutory schemes in 2016 and he essentially argues that because those sex offenders benefited from the State's mistake, the state should deliberately make the same mistake again for his benefit regardless of the supreme court's holding in *Neary*. But neither argument proves that the State lacked a rational basis for refusing to allow him to commingle. *See Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981) (explaining that an equal protection claim not involving a suspect class requires "a clear showing of arbitrariness and irrationality"); *see also Zamora v. Price*, 125 Nev. 388, 392, 213 P.3d 490, 493 (2009) (providing that the party challenging constitutionality bears the burden of proof).

Because McGuire therefore failed to demonstrate that the district court erred by rejecting his class-of-one equal protection argument, *see Rico*, 121 Nev. at 702, 120 P.3d at 817 (reviewing a constitutional challenge de novo), he failed by extension to show that the court abused its discretion when it concluded that it would be futile for him to amend his petition. *See Gardner v. Eighth Judicial Dist. Court*, 133 Nev. 730, 732-33, 405 P.3d 651, 654 (2017) (explaining that district court orders denying motions to amend are reviewed for an abuse of discretion and that granting such motions is inappropriate if amendment would be futile). Thus, we affirm the district court's order dismissing McGuire's petition for lack of

jurisdiction. *See Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (providing that subject matter jurisdiction is a question of law subject to de novo review).

It is so ORDERED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Robert L. Langford & Associates
Attorney General/Carson City
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Washoe District Court Clerk