

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD ALEX STEVENSON,
Appellant,
vs.
CHURCHILL COUNTY; ARTHUR
EUGENE MALLORY; AND
CHRISTOPHER DERICCO,
Respondents.

No. 79956-COA

FILED
DEC 21 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *Autocoo*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald Alex Stevenson appeals from an order of dismissal in a civil rights matter. Tenth Judicial District Court, Churchill County; Steven Elliott, Senior Judge.

Stevenson, a former inmate, filed a civil rights complaint against respondents pursuant to 42 U.S.C. § 1983, seeking injunctive relief. In particular, Stevenson alleged that upon his release from custody he would be subject to conditions of lifetime supervision pursuant to NRS 213.1243, but because he committed his crimes in 2001 and was convicted in 2004, he should not be subject to the residency restrictions and interstate compact provisions, which were added to NRS 213.1243 after his conviction—in 2007 and 2005, respectively. *See* 2007 Nev. Stat., ch. 528, § 8, at 3256-58; 2007 Nev. Stat., ch. 418, § 5, at 1918; 2005 Nev. Stat., ch. 507, § 35, at 2879-80. Stevenson alleged that he intended to move to Oregon upon his release from custody and if the residency and interstate compact provisions were imposed upon him, such that he could then face felony charges for violation of the conditions of his lifetime supervision, it would violate his constitutional rights. Accordingly, Stevenson asserted that he

was entitled to injunctive relief prohibiting respondents from retroactively applying the subject lifetime supervision provisions to him upon his release.

The district court dismissed Stevenson's complaint against respondent Christopher DeRicco—the Chair of the Nevada Board of Parole Commissioners—without prejudice, concluding that the claims were not yet ripe. The district court dismissed the complaint against respondents Churchill County and Arthur Mallory—the Churchill County District Attorney—with prejudice, similarly concluding that the claims were not ripe. But the district court also concluded that the complaint failed to state a claim against the County and Mallory because Stevenson's complaint challenged the application of certain conditions of lifetime supervision to him and only the Board of Parole Commissioners could determine which conditions would apply to Stevenson upon his release. And because the County and Mallory had no authority regarding which conditions of lifetime supervision were applied to Stevenson, the complaint failed to state a claim against them. Stevenson then filed a motion to alter or amend the order pursuant to NRCP 59(e) and NRCP 60(b), which the district court denied. In its order, the district court reiterated its prior conclusions as to ripeness, but also held that the County and Mallory were not proper defendants, concluding that a county is a subdivision of the state, not a municipality, such that the County and Mallory could not be sued pursuant to 42 U.S.C. § 1983. This appeal followed.

On appeal, Stevenson challenges the district court's dismissal of his complaint. In particular, Stevenson contends that his claims are ripe, pursuant to *American Civil Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1055 (9th Cir. 2012), and that the County and Mallory were proper defendants. This court reviews a district court's order granting a motion to

dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). An order granting a motion to dismiss is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complainant. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

Here, the district court dismissed Stevenson's complaint on the basis that his claims were not ripe as Stevenson had yet to be released, such that the conditions of his lifetime supervision had not been imposed and which conditions would be imposed was unknown. Although a plaintiff need not have already suffered an injury to file suit, the harm must be probable and a claim is not ripe when the alleged harm is speculative or hypothetical. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006). Having reviewed the record on appeal, we agree with the district court that Stevenson's claims are not yet ripe as his alleged harm—potential prosecution for a possible future violation of a lifetime supervision condition that has yet to be imposed—is speculative. Indeed, in Stevenson's complaint, he acknowledged that it was unclear whether the subject lifetime supervision conditions would be applied to him. *See Id.*; *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1140 (9th Cir. 1999) ("The threat of enforcement based on a future violation—which may never occur—is beyond speculation.").

And contrary to Stevenson's assertion, *American Civil Liberties Union of Nevada v. Masto*, supports the conclusion that Stevenson's claims are not yet ripe. In that case, the Ninth Circuit explained that whether the residency and movement restrictions, made part of NRS 213.1243 in the 2007 amendments, could be applied retroactively to felons who committed

their crimes prior to its enactment was an open question. *Am. Civil Liberties Union of Nev.*, 670 F.3d at 1062. But the court held that the State of Nevada's representation that it would not apply the residency and movement restrictions retroactively was a binding judicial admission, such that there was no threat that the plaintiffs in that case "or anyone similarly situated will be subject to any deleterious effect or injury from the statute," and the issue was moot. *Id.* at 1061-65; *see also Does 1-35 v. State*, No. 2:15-cv-01638-RFB-DJA, 2020 WL 5820992, at *3-6 (D. Nev. Sep. 29, 2020) (concluding that the retroactive application of NRS 213.1243's movement and residency restrictions to any plaintiff whose last criminal offense predated the 2007 amendments violates the Ex Post Facto Clause in light of the State's binding judicial admission in *American Civil Liberties Union of Nevada v. Masto*). Moreover, Stevenson has filed a "Notice of Additional Facts" with this court indicating that since filing his informal brief, he has been released from custody and the subject lifetime supervision provisions have not been imposed upon him. Thus, we discern no error in the district court's dismissal based on its conclusion that the claims were not yet ripe. *See Munda*, 127 Nev. at 923, 267 P.3d at 774; *Herbst Gaming*, 122 Nev. at 887, 141 P.3d at 1231.


Additionally, the district court concluded that Stevenson failed to state a claim against the County and Mallory, such that dismissal with prejudice was warranted. As noted above, the district court concluded that Stevenson's complaint challenged the future application of certain conditions of lifetime supervision, but the County and Mallory had no authority regarding which conditions would be applied to Stevenson, such that Stevenson failed to state a claim against them. And on appeal, Stevenson has failed to offer any argument addressing those grounds.

Thus, because Stevenson fails to raise any arguments addressing the grounds relied on by the district court in dismissing the County and Mallory for failure to state a claim, he has waived any such challenge and we necessarily affirm the district court's order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Steven Elliott, Senior Judge
Ronald Alex Stevenson
Attorney General/Carson City
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Attorney General/Dep't of Public Safety/Carson City
Churchill County Clerk

¹Insofar as Stevenson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. We likewise deny all other requests for relief currently pending before this court.