

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
CCWII TRAVIS; WHITE PINE COUNTY
CLERK, WARDEN RENEE BAKER;
ASSISTANT DIRECTOR SHERYL
FOSTER; VICKIE JOHNSON; JUDGE
GARY D. FAIRMAN; WHITE PINE
COUNTY COURT ADMINISTRATOR;
AND JAMES G. COX,
Respondents.

No. 82089-COA

FILED

OCT 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Felton L. Matthews, Jr., appeals from the final judgment in a civil rights action. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Matthews commenced the underlying civil rights action against, as relevant here, respondents the White Pine County Clerk (the Clerk); Seventh Judicial District Court Judge Gary D. Fairman; and Vickie Johnson, a former employee of the Eighth Judicial District Court Clerk's Office.¹ In particular, Matthews alleged that the White Pine County Clerk

¹Although several additional parties are identified as respondents to this appeal, Matthews presents no specific argument with respect to the district court's resolution of his claims against them, and thus, we

failed to “promptly process” a prior proceeding that he commenced before Judge Fairman, that Judge Fairman did not promptly rule on a request to proceed in forma pauperis that he submitted in that proceeding, and that Johnson failed to file appeals from two other district court proceedings.

The district court dismissed Matthews’ claim against Judge Fairman sua sponte and referred him to the Nevada Department of Corrections for forfeiture of his good-time credits, reasoning that Judge Fairman was entitled to absolute immunity and also immune to suits brought under 42 U.S.C. § 1983, and that Matthews brought his claim against Judge Fairman for an improper purpose. Matthews later sought reconsideration of this decision, which was denied. Thereafter, Johnson moved to dismiss Matthews’ claim against her, arguing, among other things, that he failed to state a claim for which relief could be granted. The district court agreed and granted Johnson’s motion.

In the interim, Matthews and the Clerk filed competing motions for summary judgment. In resolving these motions, the district court looked to Matthews’ motion for summary judgment to construe his claim against the Clerk. Specifically, the district court observed that Matthews asserted that the prior proceeding before Judge Fairman did not “move forward” because the Clerk failed to submit his request to proceed in forma pauperis to Judge Fairman, which purportedly left him unable to serve two defendants in the proceeding. The district court found that, although it was

necessarily affirm the district court’s resolution of those claims. *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).

not clear when the Clerk submitted the request to Judge Fairman, the record demonstrated that the request was submitted because Judge Fairman ruled on it. Moreover, the district court found that Matthews did not present any evidence to show that the Clerk acted negligently or that Matthews ever attempted to serve the two defendants in the prior action who purportedly escaped service. In light of the foregoing, the district court granted the Clerk's motion for summary judgment on Matthews' claim against it. This appeal followed.

We review an order granting an NRCP 12(b)(5) motion to dismiss de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Our review is rigorous, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissal under NRCP 12(b)(5) is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. Similarly, we review a district court's order granting summary judgment de novo. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

Beginning with Matthews' claim against Judge Fairman, to the extent he sought money damages, he does not dispute that the district court correctly dismissed the claim based on absolute immunity. *See State v. Second Judicial Dist. Court*, 118 Nev. 609, 615, 55 P.3d 420, 423 (2002) ("Absolute immunity is a broad grant of immunity not just from the imposition of civil damages, but also from the burdens of litigation, generally."); *N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 114, 807 P.2d 728, 732 (1991) (recognizing that states and state officials acting in their official capacities are not subject to suit for money damages under 42 U.S.C. § 1983 since neither are persons for purposes of that statute). Instead, Matthews argues that he could properly bring claims for injunctive and declaratory relief against Judge Fairman.

But to the extent that Matthews asserted a claim for declaratory or injunctive relief to obtain a ruling on his request to proceed in forma pauperis, his claim was moot from the outset since Judge Fairman granted the request before Matthews commenced the underlying proceeding. *See DeGraw v. Eighth Judicial Dist. Court*, 134 Nev. 330, 332, 419 P.3d 136, 139 (2018) (providing that the appellate court's "duty is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions" (internal quotation marks omitted)); *see also Kipen v. Lawson*, 57 Fed. App'x 691, 691 (6th Cir. 2003) (concluding that a request for injunctive relief seeking a ruling on a petition for a writ of habeas corpus was moot since the presiding judge denied the petition). And because Matthews does not argue or explain what other purpose his claim for injunctive or declaratory relief could have under these

circumstances, see *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider issues unsupported by cogent argument), he failed to demonstrate that the district court erred in dismissing the claim.² See *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672; see also *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (providing that Nevada's appellate courts "will affirm the order of the district court if it reached the correct result, albeit for different reasons").

Turning to the dismissal of Matthews' claim against Johnson, he contends that he stated a claim against her based on the United States Supreme Court's decision in *Lewis v. Casey* which explained that, to state a claim regarding access to the courts, a plaintiff must allege actual injury, meaning frustration of an attempt to prosecute a nonfrivolous legal claim relating to the inmate's conviction or conditions of confinement. 518 U.S. 343, 351-56 (1996). In his complaint, Matthews alleged that Johnson refused to file appeals from two district court actions to block his challenges to information in his presentence investigation report (PSI). But insofar as Matthews' appeals in those matters would have been related to his PSI and, by extension, to his conditions of confinement, they would have been unsuccessful because a challenge to the accuracy of a PSI must be made at

²While Matthews contends that the district court should not have referred him to NDOC for forfeiture of his good-time credits for bringing his claim against Judge Fairman, he also states that he was granted parole in November 2020. As a result, insofar as Matthews seeks restoration of any good-time credits that were forfeited, the issue is moot. See *DeGraw*, 134 Nev. at 332, 419 P.3d at 139.


or before sentencing or, if not resolved in the defendant's favor, on direct appeal after sentencing. See *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 251, 255 P.3d 209, 214 (2011) (reversing a district court order directing amendments to an inmate's PSI because the district court lacked authority to direct the amendments post-sentencing). Thus, Matthews failed to allege that Johnson frustrated a nonfrivolous legal claim and thereby caused an actual injury that is cognizable for purposes of an access to the courts claim. See *Lewis*, 518 U.S. at 354-56. As a result, to the extent Matthews maintains that he asserted an access to the courts claim against Johnson, he has not demonstrated that the district court erred by dismissing it. See *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.


Matthews next challenges the summary judgment against him on his claim against the Clerk. In doing so, Matthews does not dispute the district court's determination that his claim concerned the proceeding before Judge Fairman and the Clerk's alleged failure to submit his request to proceed in forma pauperis to Judge Fairman, which purportedly left him unable to serve two defendants in the proceeding. See *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Instead, he once again argues that relief is warranted based on *Lewis*.

But irrespective of whether Matthews' allegations were sufficient to state an access to courts claim under *Lewis*, the district court found that the Clerk filed Matthews' request and submitted it to Judge Fairman, that Judge Fairman ruled on the request, that Matthews failed to show that he attempted to serve the defendants at issue, and that Matthews requested to voluntarily dismiss the proceeding because he was granted in

forma pauperis status in another action and was attempting to serve process in that action. Although the district court concluded that the Clerk was entitled to judgment as a matter of law based on these findings, Matthews does not meaningfully address them or otherwise argue or explain why his claim was viable despite them. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. As a result, he has not demonstrated that the district court erred by granting summary judgment in favor of the Clerk. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

³Insofar as Matthews raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. Steve L. Dobrescu, District Judge
Felton L. Matthews, Jr.
Attorney General/Carson City
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White Pine County Clerk