


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
RENEE BAKER, WARDEN,
Respondent.

No. 84889-COA

FILED

APR 06 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ferrill Joseph Volpicelli appeals from a jury verdict in a civil rights action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Volpicelli first argues that the district court abused its discretion by denying his request for the appointment of counsel to represent him at trial. Volpicelli also contends that the district court failed to articulate a justifiable reason for its denial of his request and should have sought out an attorney to volunteer to represent him.

“An abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” *Skender v. Brunsonbuilt Constr. & Dev. Co.*, 122 Nev. 1430, 1435, 148 P.3d 710, 714 (2006). A party has no constitutional right to counsel in civil cases, and “the trial court is the proper evaluator of the need for counsel on a case-by-case basis.” *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804, 813, 102 P.3d 41, 45, 51 (2004); *see also Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (providing that the decision to appoint counsel in a civil case requires exceptional circumstances and the district court to evaluate both the likelihood of success and the party’s ability to present his claims).

The district court reviewed Volpicelli's request for the appointment of counsel and made several relevant findings. The district court found that Volpicelli's claims were not particularly complex and he was able to present them in a sufficient manner. And the district court ultimately concluded that Volpicelli did not demonstrate that exceptional circumstances warranted the appointment of counsel. Thus, the district court informed Volpicelli that counsel would not be appointed.

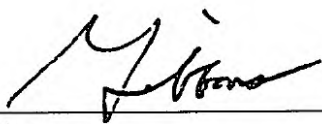
The district court articulated justifiable reasons for its denial of Volpicelli's request for counsel, and its findings are supported by the record. Volpicelli also did not demonstrate that the district court should have sought an attorney to volunteer to represent him. Accordingly, Volpicelli did not demonstrate that the district court's decision to deny his request for the appointment of counsel was arbitrary or capricious or exceeded the bounds of law or reason. Based on the foregoing, we therefore conclude that the district court did not abuse its discretion by denying Volpicelli's request for appointed counsel.

Second, Volpicelli argues that the district court erred by directing the Sheriff to find additional potential jurors after many of those who had been summoned to serve as jurors failed to appear for the trial. The district court noted that only 20 of the 75 persons summoned to appear in the jury venire arrived for the trial. The district court therefore directed the Sheriff to round up more people to serve as potential jurors in this matter.

The district court's direction to the Sheriff was not the proper procedure in the Eleventh Judicial District Court for finding potential jurors. *Cf.* 11JDCR 4.6(e)(2), (3) (providing the process for the jury commissioner to select potential jurors for service).

However, Volpicelli did not raise an objection to the district court's action in this regard, and he also did not object to the composition of the jury. Volpicelli thus acquiesced to the process of finding potential jurors that was utilized by the district court in this trial. Because Volpicelli acquiesced to the process utilized by the district court to obtain additional potential jurors, he is not entitled to relief based on this claim. See *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 156 n.2, 111 P.3d 1112, 1115 n.2 (2005) (noting that the appellants' counsel acquiesced to the use of a nonstandard procedure for selecting alternate jurors and that nothing precluded counsel from so doing). Moreover, even if Volpicelli had not acquiesced to the procedure utilized by the district court to find more potential jurors, Volpicelli does not demonstrate that any failure to follow 11JDCR 4.6 resulted in prejudice that would warrant a new trial. See *id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹To the extent Volpicelli 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 our disposition of this appeal.

cc: Hon. Jim C. Shirley, District Judge
Ferrill Joseph Volpicelli
Attorney General/Carson City
Clerk of the Court/Court Administrator