


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
J. FERRO; T. GARRETT; B. WILLIAMS;
STATE OF NEVADA, EX REL.,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondents.¹

No. 84768-COA

FILED

MAY 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

Justin Odell Langford appeals from a district court order dismissing his complaint in a civil rights action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Langford brought the underlying 42 U.S.C. § 1983 action against respondent the State of Nevada, ex rel., Nevada Department of Corrections (NDOC), and several NDOC officials and employees—respondents J. Ferro, T. Garrett, and B. Williams. In his complaint, Langford asserted violations of his rights under the First and Eighth Amendments to the United States Constitution, alleging that he utilized NDOC's grievance process to challenge an unauthorized mail notification that he received and that Ferro, Garrett, and Williams each denied one of his grievances during that process based on NDOC administrative regulations (ARs) that were either unconstitutional or misapplied. Respondents moved to dismiss Langford's claims pursuant to NRCP 12(b)(5), arguing, among other things, that Ferro's, Garrett's, and Williams'

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

denial of Langford's grievances was not a basis for liability under § 1983 and that the State and NDOC were not persons for purposes of the statute. Langford opposed that motion, arguing that he asserted viable claims against Ferro, Garrett, and Williams because their denial of his grievances demonstrated deliberate indifference to the underlying alleged violation of his constitutional rights. Following a hearing, the district court granted respondents' motion for the reasons stated therein and dismissed the complaint. This appeal followed.

We review district court orders granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the plaintiff's complaint as true and drawing all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Dismissal is only appropriate "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. In evaluating an NRCP 12(b)(5) motion, this court must determine whether "the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (internal quotation marks omitted).

On appeal, Langford primarily challenges the dismissal of his claims by arguing that the ARs that Ferro, Garrett, and Williams cited in denying his grievances were either unconstitutional or misapplied. However, Langford's focus in this respect is misplaced, as he cannot proceed with § 1983 claims against respondents if they were not proper parties thereto. Here, the district court correctly determined that Langford could not proceed against the State and NDOC because they were not persons for purposes of § 1983. *See* § 1983 (allowing a plaintiff to bring a civil rights claim against any person who deprives the plaintiff of rights, privileges, or immunities secured by the United States Constitution); *see also Craig v.*

Donnelly, 135 Nev. 37, 40, 439 P.3d 413, 415-16 (Ct. App. 2019) (recognizing, based on established precedent, that states and state agencies are not “persons” within the meaning of § 1983).

Moreover, the district court correctly determined that Ferro, Garrett, and Williams were not proper parties to Langford’s § 1983 claims since he did not show that they personally participated in the alleged constitutional violations. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (providing that a plaintiff must establish that the defendant personally participated in the violation of the plaintiff’s constitutional rights to prevail on a § 1983 claim). Indeed, insofar as Langford contends that Ferro, Garrett, and Williams personally participated in the deprivation of his constitutional rights because they denied his grievances or otherwise failed to act despite being aware of the alleged deprivations, this type of conduct is insufficient by itself to establish personal participation, *see Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir 1999) (explaining that a supervisor’s denial of a grievance alone does not amount to an active unconstitutional action for which he or she can be held liable), and Langford has not otherwise demonstrated that respondents caused the deprivations through their own individual actions. *See Gates v. Legrand*, No. 3:16-cv-00321-MMD-CLB, 2020 WL 3867200, at *5 (D. Nev. March 27, 2020) (surveying caselaw involving § 1983 claims based on the denial of a grievance and identifying the circumstances that must exist for personal participation to be established); *Bonham v. State*, No. 83458-COA, 2022 WL 832262, at *2 (Nev. Ct. App. Mar. 17, 2022) (Order Affirming in Part, Reversing in Part, and Remanding) (rejecting a similar effort to establish personal participation based on the denial of inmate grievances relating to deductions from an inmate account); *see also, e.g., Sawyer v. Aranas*, No. 3:18-cv-00346-RCJ-WGC, 2021 WL 3506525, at *6 (D. Nev. May 26, 2021) (explaining that a grievance responder may be liable for failing to act to

address an ongoing deprivation, which could have been remedied, but not an act which has already occurred and is complete, such that it cannot be prevented after the fact). Thus, because respondents were not proper parties for purposes of § 1983, Langford's § 1983 claims fail as a matter of law, and the district court did not err by dismissing them. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we affirm the district court's dismissal of Langford's § 1983 claims.

This does not end our analysis, however, because state law claims against the State and NDOC were arguably available to allow Langford to challenge the withholding of his mail, given that Nevada has waived its sovereign immunity, *see* NRS 41.031(1), and authorized inmates who have exhausted their administrative remedies to bring claims against NDOC. *See* NRS 41.0322(1). While we recognize that Langford's complaint was largely couched in terms of his federal constitutional claims, it nonetheless named parties that are the proper subject of a suit brought pursuant to NRS 41.031(1) and NRS 41.0322(1), but not § 1983—specifically, the State and NDOC. *See Craig*, 135 Nev. at 39, 439 P.3d at 415 (explaining how to bring a claim against the State and its agencies).²

Moreover, the allegations in Langford's complaint seemingly implicated state law. Indeed, in his complaint, Langford provided factual

²Insofar as Langford's complaint also named Ferro, Garrett, and Williams in their official capacity, these parties, like the State and NDOC, could only be sued pursuant to NRS 41.031(1) and NRS 41.0322(1), *see Craig*, 135 Nev. at 39, 439 P.3d at 415, which further suggests that Langford intended to bring state law claims in this matter. However, given that Langford has not demonstrated that the district court erred in concluding that Ferro, Garrett, and Williams did not personally participate in any violation of his rights, any state law claims against them necessarily fail, and we therefore affirm their dismissal from this case. *Cf. Shehee*, 199 F.3d at 300; *Sawyer*, No. 3:18-cv-00346-RCJ-WGC, 2021 WL 3506525, at *6; *Bonham*, No. 83458-COA, 2022 WL 832262, at *2.

allegations concerning the withholding of his mail, asserted that his mail was withheld based on ARs that were misapplied or unconstitutional, implied that he did not receive the mail after exhausting his administrative remedies, and requested an order awarding damages and directing that his mail be released to him. However, based on the order granting respondents' motion to dismiss, it does not appear that the district court considered whether the foregoing was sufficient to present state law claims against the State and NDOC under Nevada's notice pleading standard. *See Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878 (Ct. App. 2020) (recognizing that a complaint satisfies Nevada's notice pleading standard if it sets forth facts that support a claim even if the plaintiff does not "use the precise legalese in describing his grievance" (internal quotation marks omitted)).

We recognize that portions of the district court's order may arguably be read as addressing Langford's claims against the State and NDOC under both federal and state law. However, even reading the order in this manner, we cannot conclude that the district court properly dismissed Langford's claims insofar as they were based on state law. For example, the district court determined that dismissal was warranted since Langford alleged that his mail was withheld based on an unconstitutional AR, but failed to cite a case holding the AR unconstitutional. But this was not an appropriate basis for dismissal because Langford did not allege that the AR had been held unconstitutional, but instead, sought a holding that it was unconstitutional based on an extension of existing caselaw. And although the district court further determined that Ferro, Garrett, and Williams did not personally participate in promulgating the purportedly unconstitutional AR, this was not an appropriate basis to dismiss any claim concerning the unconstitutionality of the AR in its entirety given that Langford also named the State and NDOC in his complaint.

We recognize that the district court dismissed the State and NDOC, in part, because Langford did not include a separate cause of action specifically dedicated to those parties. However, no Nevada legal authority requires a plaintiff to dedicate a separate cause of action to each party named in a complaint. Instead, the plaintiff “need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought” and the district court must “liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (internal quotation marks omitted). Consequently, the district court was required to consider whether the allegations in Langford’s complaint, taken together, were sufficient to present a valid state-law claim against the State and NDOC, rather than whether the complaint included a separate cause of action dedicated to them, and to the extent it failed to do so in dismissing his complaint, it erred. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Thus, because it does not appear that the district court considered whether Langford presented valid state law claims against the State and NDOC and the determinations set forth in the challenged order did not support dismissing such claims insofar as they can be construed to apply, we must reverse this matter in part and remand this case for the district court to address this issue in the first instance.³ *See Bonham*, No.

³In their response, respondents assert that Langford cannot properly maintain claims concerning the constitutionality of NDOC’s ARs against the State and NDOC, but instead, must present such claims against NDOC’s director. Because respondents do not cite any legal authority that specifically supports this proposition, we decline to consider it. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are unsupported by relevant legal authority).

83458-COA, 2022 WL 832262, at *2 (reaching the same result under similar circumstances).

Based on the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jim C. Shirley, District Judge
Justin Odell Langford
Attorney General/Carson City
Clerk of the Court/Court Administrator

⁴Insofar as Langford 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.