

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORY BREWER,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
JAMES DZURENDA, DIRECTOR; AND  
TIMOTHY FILSON, WARDEN,  
Respondents.

No. 84914-COA

FILED  
JAN 17 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Cory Brewer appeals from a district court order granting summary judgment in a civil rights and state tort action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Brewer is currently incarcerated and he brought the underlying action against respondents the State of Nevada, ex. rel., Nevada Department of Corrections (NDOC); former Director James Dzurenda; and former Warden Timothy Filson (respondents). Brewer filed an action pursuant to 42 U.S.C. § 1983 in which he alleged various violations of his civil rights and he also contended that respondents were liable based upon the state tort of negligence. In his complaint, Brewer alleged that an employee of the NDOC left his cell door open, which permitted several fellow prison inmates to enter and stab him. Brewer also alleged that both Dzurenda and Filson were liable as supervisors, were responsible for permitting inmates to be housed with rival gang members, that they reviewed his grievances stemming from the incident, and they improperly

classified him in a security threat group (STG). Based on those factual allegations, Brewer contended that respondents were deliberately indifferent to his safety in violation of his rights under the Eighth Amendment, they violated his due process rights under the Fourteenth Amendment, and their actions fell below their duty of care such that they were liable based upon negligence.

Respondents moved for summary judgment and argued that there was no genuine dispute of material fact because Brewer was not entitled to relief regarding his suit against the State and its entities, Brewer did not allege that Dzurenda and Filson had sufficient personal involvement in the stabbing incident, Brewer had no liberty interest in his classification status and otherwise did not demonstrate a violation of his 14th Amendment rights. Brewer opposed their motion and filed a cross-motion for summary judgment. The district court ultimately granted respondents' motion for summary judgment, concluding that no genuine dispute of material fact remained and that respondents were entitled to judgment as a matter of law. In so doing, the court also denied Brewer's motion for summary judgment. This appeal followed.

On appeal, Brewer argues that the district court erred by granting the respondents' motion for summary judgment. This court reviews a district court's order granting summary judgment de novo. *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.

First, Brewer argues that the district court erred by finding that Dzurenda and Filson were entitled to judgment in their favor based on Brewer's failure to establish a genuine dispute of material fact as to their personal involvement in the stabbing incident.

"In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983." *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). "A supervisory official is liable under § 1983 so long as there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 798 (9th Cir. 2018) (internal quotation marks omitted). "The requisite causal connection can be established . . . by setting in motion a series of acts by others or by knowingly refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury." *Id.* (alterations in original) (internal quotation marks omitted).

Respondents produced documentary evidence demonstrating that a correctional officer improperly permitted Brewer and two fellow inmates, who were members of a STG, to come into contact with each other.

As a result, the fellow inmates attacked Brewer and stabbed him. The NDOC's report concerning the incident concluded that the attack would not have been possible if the correctional officer had not committed the error of permitting the other two inmates to come into contact with Brewer. In addition, respondents produced Brewer's grievances related to the incident, and those documents established that Filson responded to several of Brewer's grievances.

The evidence demonstrated that Dzurenda and Filson did not personally participate in the alleged violations and that they did not direct subordinates to engage in the alleged violations. In addition, the evidence was sufficient to establish that Dzurenda and Filson did not knowingly refuse to terminate acts made by others which they knew or reasonably should have known would have caused injury to Brewer. Moreover, Filson's denial of Brewer's grievances is insufficient to establish personal participation. *See Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009) (concluding that the denial of grievances alone is insufficient to establish personal participation); *Langford v. Ferro*, No. 84768-COA, 2023 WL 3324995, at \*2 (Nev. Ct. App. May 8, 2023) (Order Affirming in Part, Reversing in Part and Remanding) (stating that denial of grievances "is insufficient by itself to establish personal participation").

While Brewer made general arguments concerning the merits of his allegations, he did not submit evidence in support of his underlying claims, and his general allegations and conclusory statements were insufficient to create genuine disputes of material fact. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. As a result, Brewer failed to demonstrate the

district court's grant of summary judgment in the respondents' favor as to the personal participation of Dzurenda and Filson in the stabbing incident was in error.

Turning to Brewer's assertions that the district court improperly granted judgment in favor of the State of Nevada and the NDOC concerning his civil rights claims, we conclude Brewer's challenge lacks merit. A plaintiff cannot bring a § 1983 action against the state and its agencies because they are not persons for purposes of that statute. *See* 42 U.S.C. § 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). As a result, Brewer failed to demonstrate the district court's grant of summary judgment on these claims in favor of the State of Nevada and NDOC was in error.

Brewer also asserts that the district court erred by rejecting his 14th Amendment claims. However, he does not identify any specific contention of error concerning the district court's decision to grant judgment in favor of respondents concerning those claims and he has neglected to address any of the specific grounds upon which the district court based its decision. Brewer has thus failed to set forth any cogent argument in support of his assertion that the district court erred by granting summary judgment on those claims, and this court need not consider his bare allegations. *See Edwards v. Emperor's Garden Rest.*, 122

Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that the appellate courts need not consider claims unsupported by cogent argument). As a result, Brewer failed to demonstrate that the district court's grant of summary judgment in respondents' favor concerning the 14th Amendment claims was in error.

Next, Brewer argues that the district court erred by granting summary judgment on his state law negligence claim. We disagree. As a threshold issue, respondents contend that the district court lacked subject matter jurisdiction over the state law claim because Brewer did not complete the service requirements set forth in NRS 41.031(2) for invoking Nevada's waiver of sovereign immunity.

Sovereign immunity is a limitation on the court's subject matter jurisdiction, *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1087 (9th Cir. 2007), and the issue of subject matter jurisdiction "can be raised by the parties at any time," *Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011). "By statute, the State of Nevada has waived its sovereign immunity from civil liability in limited circumstances." *Craig*, 135 Nev. at 39, 439 P.3d at 415. NRS 41.031(2) provides that in order to properly invoke the State's waiver of sovereign immunity, "[i]n an action against the State of Nevada, the summons and a copy of the complaint must be served upon the Attorney General, or a person designated by the Attorney General" and the "administrative head of the named agency."

The record demonstrates that Brewer failed to comply with the service requirements of NRS 41.031(2) because he did not serve a summons and a copy of the complaint upon the Attorney General, a person designated

by the Attorney General, or upon the active director of the NDOC. Because compliance with the provisions of NRS 41.031(2) is necessary to properly invoke the State's waiver of sovereign immunity concerning state tort claims, Brewer's failure to comply with the service requirements required dismissal of his state tort claims against the State and the NDOC. *See Craig*, 135 Nev. at 39-40, 439 P.3d at 415 (noting that a plaintiff failed to properly invoke Nevada's waiver of sovereign immunity and thus dismissal of his state tort claims was required based on a lack of subject matter jurisdiction).

Moreover, the failure to comply with the service requirements of NRS 41.031(2) meant that the State was not a party to this action. *See Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995) ("To qualify as a party, an entity must have been named and served."); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 448, 874 P.2d 729, 734, 735 (1994) (noting that the supreme court has traditionally taken a narrow definition of the term "party" and defined it as a "person or entity [that] has been served with process, appeared in the court below and has been named as a party of record in the trial court" (emphasis omitted)). And, because the State must be a party to an action when State employees are sued in tort for acts or omissions within the scope of their duties, NRS 41.0337, Brewer's claims involving Dzurenda and Filson must also be dismissed, *see Craig*, 135 Nev. at 39-40, 439 P.3d at 415 (affirming dismissal of state tort claims against State employee defendants based on the plaintiff's failure to properly invoke the State's waiver of sovereign immunity); *Carter v. Vanhorn*, No. 79875-COA, 2021 WL 1526727 (Nev. Ct.

App. April 16, 2021) (Order of Affirmance) (affirming dismissal of a state tort action against a state agency based upon the failure to invoke the State's waiver of sovereign immunity and acknowledging that a plaintiff's state tort claims cannot proceed against state employee defendants following dismissal of the state agency).

For the foregoing reasons, we conclude that Brewer fails to demonstrate the district court's grant of summary judgment in respondents' favor was in error. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("[T]his court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook



cc: Hon. James Todd Russell, District Judge  
Cory Brewer  
Attorney General/Carson City  
Attorney General/Las Vegas  
Carson City Clerk