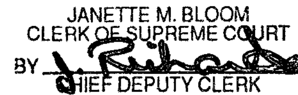
IN THE SUPREME COURT OF THE STATE OF NEVADA

L. SEVILLE PARKS,
Appellant,
vs.
MARK DRAIN; ROY WILLIAMS; DAVID MCNEELY; AND DWIGHT NEVEN,
Respondents.

No. 44718

FILED

FEB 02 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court order dismissing appellant's civil rights complaint for failure to timely serve process and failure to state a claim. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant L. Seville Parks filed an amended civil rights complaint against respondents on June 2, 2004, alleging various unconstitutional violations of prison regulations. Because the district court had repeatedly permitted Parks to amend his complaint, Parks was informed that he had until July 26, 2004, to serve process on the named defendants. On July 8, 2004, Parks moved for a stay, alleging that he was unable to timely serve process without a district court order authorizing "additional legal copy work". Parks had apparently reached the $100 maximum debt limit for prison copy work charges and wanted the court to extend the credit limit so that he could serve respondents with the summonses and photocopies of the complaint. The district court denied the motion, and Parks failed to accomplish service before the court-ordered deadline.

On August 9, 2004, the district court ordered Parks to show cause why his complaint should not be dismissed for failure to serve



07-02695

process. Parks did not respond directly to the show cause order, but filed a "motion for order" on September 15, 2004, again requesting the district court waive the copy debt limit.

The district court dismissed Parks' entire complaint on January 31, 2005. After noting that Parks had apparently accomplished service on respondent Dwight Neven, the district court granted Neven's motion to dismiss for failure to state a claim. The district court then dismissed Parks' complaint as to the other named defendants for failure to serve process. This appeal followed.

Dismissal for failure to state a claim

NRCP 12(b)(5) provides that a claim may be dismissed for "failure to state a claim upon which relief can be granted." "The standard of review for a dismissal under NRCP 12(b)(5) is rigorous as this court must construe the pleading liberally and draw every fair inference in favor of the non-moving party."[1] A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief.[2]

Parks' complaint alleges that he was subjected to improper disciplinary action, an inadequate diet, and substandard sanitary conditions by prison employees. The only allegation directed at Neven is that he "failed to train staff." This appears to be an allegation of

---

[1]Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

[2]Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

negligence. However, Parks has repeatedly failed to demonstrate how Neven's conduct fell below the standard of care. Nor has he indicated how deficient training could have proximately caused these alleged constitutional violations. As a result, we conclude that the district court did not err in dismissing Parks' claim against Neven pursuant to NRCP 12(b)(5).[3]

Dismissal for failure to serve process

NRCP 4(i) requires a plaintiff to serve the defendants with summonses and copies of the complaint within 120 days of filing the complaint. Unless the plaintiff files a motion for an extension of time in which to serve process and demonstrates good cause as to why process was not served within the required time, the district court must dismiss without prejudice any action in which process has not been served within the 120-day deadline. Dismissal is mandatory unless there is a legitimate excuse for failing to serve within the 120 days.[4] "The determination of good cause is within the district court's discretion."[5]

We conclude that the district court did not abuse its discretion in dismissing Parks' complaint under NRCP 4(i). "Allowing inmates to pay for and receive photocopies of the legal materials required by the courts is part of the 'meaningful access' to the courts that inmates are

---

[3]See Hampe v. Foote, 118 Nev. 405, 408, 47 P.2d 438, 439 (2002) (holding that dismissal is proper where the allegations in the complaint are insufficient to establish the elements of a claim for relief.)

[4]Scrimer v. Dist. Ct., 116 Nev. 507, 513, 998 F.2d 1190, 1193-94 (2000).

[5]Id.

constitutionally entitled to."[6] However, a prisoner's right to obtain meaningful access to the courts does not include unlimited or free access to copy work, especially when suitable alternatives exist.[7] Parks was fully aware that he had the option of using carbon paper to hand-copy the complaint, and, in fact, has filed numerous hand-copied documents during this litigation.[8] Furthermore, the district court repeatedly extended the service deadline and was more than solicitous in permitting Parks to amend his complaint. Accordingly, the district court did not abuse its discretion when it determined that Parks failed to demonstrate good cause for failing to serve process, and we affirm the court's order dismissing Parks' complaint.

---

[6]Johnson v. Parke, 642 F.2d 377, 380 (10th Cir. 1981).

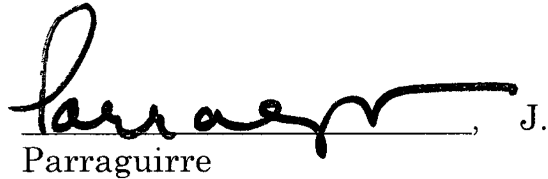
[7]See, e.g., Kershner v. Mazurkiewicz, 670 F.2d 440, 445 (3d Cir.1982) ("'The constitutional concept of an inmate's right of access to the courts does not require that prison officials provide inmates free or unlimited access to photocopying machinery.'") (quoting Johnson v. Parke, 642 F.2d 377, 380 (10th Cir. 1981)); Jones v. Franzen, 697 F.2d 801, 803 (7th Cir. 1983) ("[B]road as the constitutional right of liberty is, it does not include the right to xerox."); Johnson v. Moore, 948 F.2d 517, 521 (9th Cir. 1991) ("A denial of free photocopying does not amount to a denial of access to the courts."); Harrell v. Keohane, 621 F.2d 1059, 1061 (10th Cir. 1980) ("A prisoner's right of access to the court does not include the right of free unlimited access to a photocopying machine, particularly when as here, there are suitable alternatives."); Wanninger v. Davenport, 697 F.2d 992, 994 (11th Cir. 1983) ("We agree with the Tenth and Third Circuits that jail officials do not necessarily have to provide a prisoner with free, unlimited access to photocopies of legal precedents in order to protect the prisoner's right to access to the courts.").

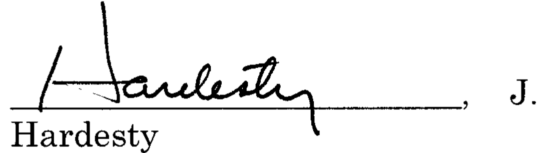
[8]See AR 722.01 (1.5.2.4) (providing that "[c]arbon paper should be made available for any inmate who so requests for legal purposes.")

Conclusion

We conclude that the district court properly dismissed Parks' claims against Neven for failure to state a claim. Furthermore, we conclude that the district court did not abuse its discretion in dismissing Parks' claims against the other defendants for failure to serve process. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_______________, J.
Parraguirre


_______________, J.
Hardesty

_______________, J.
Saitta

cc: Hon. Steve L. Dobrescu, District Judge
Lawrence Seville Parks
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk