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
L. SEVILLE PARKS, A/K/A LAWRENCE SEVILLE PARKS, Appellant, vs. TIM JARED; LARRY SHEW; MIKE SCHEELS; ED ABRAHAMSON; AND STEVEN ANSOLABEHERE, Respondents.	No. 44928 FILED NOV 03 2005 JANETTE M. BLOOM CLERK OF SUPREME COURT BY [signature] CHIEF DEPUTY CLERK

ORDER GRANTING MOTIONS IN PART AND DIRECTING A RESPONSE IN DOCKET NO. 44718; ORDER OF AFFIRMANCE IN DOCKET NO. 44928

These are proper person appeals from district court orders dismissing appellant's civil rights complaints for failure to timely serve process and failure to state a claim (No. 44718), and for lack of prosecution under EDCR 2.90 (No. 44928). Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge (No. 44928).

Motions

On September 9, 2005, appellant L. Seville Parks filed a motion, in both appeals, for extensions of time in which to file the civil proper person appeal statements and permission to exceed the copy fee debt limit, in order that he may serve respondents with copies of the appeal statements. In addition, we have received several documents from Parks in which he addresses or refers to the merits of his September 9 motion and requests additional, or the "re-issuance" of, appeal statement forms. In these documents, Parks also makes various allegations of

05-21754

retaliatory and improper conduct by several persons at the prison, and he seeks an order imposing sanctions for some of this conduct on persons who are not named as respondents to this appeal.

To the extent that Parks' documents reference events that are outside of the record and not directly applicable to the merits or processing of this appeal, they may not be considered by this court,[1] and any relief requested therein is denied.[2] Likewise, his request for sanctions is also denied.

Motions relating to Docket No. 44718

Nevertheless, we grant Park's request for additional appeal statement forms and an extension of time in which to complete and serve them in Docket No. 44718. The clerk of this court shall issue to Park four civil proper person appeal statement forms, as revised for appeals pending

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[1]Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (recognizing that this court may not consider matters outside of the record on appeal).

[2]To the extent that Parks alleges that he is not properly and timely receiving the papers sent to him from this court, there appears to be no support for his contentions; according to Parks' assertions, he received the pilot program materials that were sent to him on August 29, 2005, two and three days later, on August 31 and September 1. This timeframe appears to constitute a reasonable mailing period. Cf. NRAP 26(c) (allowing for an additional three days to the time prescribed for responding after service by mail). Moreover, Parks has been able to timely respond to this court's orders. As we have considered Parks' documents received on October 12, 2005, we direct the court clerk to file them in each appeal, to the extent that she has not already done so.

before June 13, 2005.[3] As stated in the forms' directions, in completing them, Parks need not refer to legal authority.

In addition, we point out that the prison regulations provide that "[c]arbon paper should be made available for any inmate who so requests for legal purposes."[4] As the appeal statement forms allow for responses to be made only within a limited amount of space, the attachment of exhibits is not allowed, and, in this case, a limited number of copies is required for filing and service purposes, we conclude that Parks may handwrite copies of his appeal statements without undue burden, especially if he pursues the use of carbon paper. Consequently, we deny his motion for permission to exceed the copy fee limit.

Parks shall have forty days from the date of this order in which to comply with the pilot program directions. In so doing, Parks is directed to complete and file the original appeal statement form in Docket No. 44718 and one copy (or the original and two copies, plus a self-addressed, stamped envelope, if he would like the clerk to return to him a file-stamped copy), with this court. Another copy of the appeal statement should be served on respondent's counsel. No further extensions will be granted absent extreme and unforeseeable circumstances.

Motions relating to Docket No. 44928

In Docket No. 44928, however, Parks' notice of appeal, which is part of the district court record, sufficiently addresses the information sought by the appeals statement forms, including the facts of the case and the reasons for appealing. In addition, the district court record has been

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[3]See ADKT 385 (Order Re: Pilot Program in Civil Appeals, August 26, 2005).

[4]AR 722.01(1.5.2.4).

filed in this court. Under the circumstances of this case, and despite our previous order, we conclude that Parks should not be required to participate in the civil appeals proper person pilot program. Accordingly, we vacate the August 29, 2005 order requiring Parks to file the appeal statement in Docket No. 44928. Parks' motions for an extension of time, permission to exceed the copy fee limit, and for additional forms in No. 44928, are denied as moot.

Docket No. 44718

Upon reviewing the record in Docket No. 44718, it appears that the district court may have erred and abused its discretion in dismissing the complaint. Constitutionally, Nevada has an obligation to provide prisoners with "meaningful access to the courts."[5] Although prison officials have discretion in determining which methods will be used to provide meaningful access, the chosen method must "give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts."[6]

"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 constitutionally entitled to."[7] A prisoner's right to obtain meaningful access to the courts does not necessarily include unlimited or free access to copy work, especially when suitable

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[5]See Bounds v. Smith, 430 U.S. 817, 824-25 (1977) (discussing the scope of prisoners' rights to access the courts at state expense).

[6]Id. at 825; see also Dziedzic v. Goord, 664 N.Y.S.2d 1022, 1023 (Sup. Ct. 1997).

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

alternatives exist.[8] Accordingly, the Nevada Department of Corrections may properly charge prisoners copy work fees.[9] Further, according to prison regulations, prisoners are permitted to accrue a maximum $100 debt for copy work charges.[10]

In this case, however, Parks was permitted to proceed in the district court proceedings with in forma pauperis status. In attempting to serve the named defendants with summons and a copy of his civil rights compliant, as required by NRCP 4, Parks several times notified the district court that he was not permitted to make copies of his multiple-page complaint in order to serve it upon a number of named defendants because he had reached the maximum copy fee debt limit, and he moved multiple times for permission to exceed that limit. Apparently as a result of his inability to make copies, he never served process on most of the named defendants, for which deficiency his complaint against them was ultimately dismissed. It appears that the district court did not, however, determine whether a suitable alternative existed that would allow Parks to serve the named defendants with process. Thus, it appears that Park's right to meaningful court access might have been denied in this instance.[11]

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[8]Harrell v. Keohane, 621 F.2d 1059, 1061 (10th Cir. 1980); see also Bounds, 430 U.S. at 824-25 (discussing the scope of states' duties to ensure that prisoners are afforded meaningful court access); AR 722.01(1.5.2) (allowing indigent inmates to request limited copies on credit).

[9]AR 722.01 (1.5.2).

[10]Id. at 722.01 (1.5.2.3).

[11]Cf. Johnson, 642 F.2d at 380 (noting that "when numerous copies of often lengthy complaints or briefs are required, it is needlessly draconian to force an inmate to hand copy such materials when a photocopying machine is available and the inmate is able and willing to

continued on next page . . .

Accordingly, respondents shall have seventy days from the date of this order in which to demonstrate why the district court's dismissal order should not be reversed and the case remanded for further proceedings. In particular, respondents should address whether the district court properly dismissed Park's complaint underlying No. 44718 for his failure to serve process, even though he asserted that he had reached the maximum debt limit for prison copy work charges and repeatedly moved for permission to exceed the debt limit. In addition, the answer should address whether the district court properly dismissed the complaint against respondent Dwight Neven for failure to state a claim.

Docket No. 44928

It is a plaintiff's responsibility to proceed with his case diligently and expeditiously.[12] EDCR 2.90 provides that the court, on its own initiative, may dismiss any case that has been pending for over two years, "in which no action has been taken for more than [six] months." A case that has been dismissed under this rule will be reinstated if the plaintiff files a written request within thirty days of the court's service of notice of entry.[13] The district court's dismissal for lack of prosecution will be upheld on appeal absent a gross abuse of discretion.[14]

Here, Parks' complaint was filed on October 24, 2001. That same day, he was granted leave to proceed in forma pauperis. Thereafter,

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. . . continued

compensate the state for its use); Harrell, 621 F.2d 1059; Dziedzic, 664 N.Y.S.2d 1022.

[12]Walls v. Brewster, 112 Nev. 175, 178, 912 P.2d 261, 263 (1996).

[13]EDCR 2.90(c).

[14]Walls, 112 Nev. at 178, 912 P.2d at 263.

Parks submitted various "motions" to the district court, but there is no indication in the record that he ever served process on the named defendants. On April 1, 2003, Parks filed a "motion for information," in which he noted his concern for the lack of action taken by the court on his complaint. He also notes that his prior "motions" had not been ruled on. Those "motions," however, were not presented in proper form, and thus were never properly submitted for decision.[15] Parks took no further action.

On February 16, 2005, significantly more than six months after Parks' latest filing, the district court dismissed Park's complaint without prejudice under EDCR 2.90. The court's order, a copy of which was mailed to Parks, indicated that Parks could request reinstatement within thirty days, but Parks did not do so. As the plaintiff, it was Parks' responsibility to prosecute his case. Accordingly, as he did not fulfill this responsibility, the district court did not abuse its discretion in dismissing Parks' complaint, and we affirm the district court's order in Docket No. 44928.

It is so ORDERED.

Becker, C.J.
Becker

Douglas, J.
Douglas

Rose, J.
Rose

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[15]See EDCR 2.20.

cc: Hon. Douglas W. Herndon, District Judge
Lawrence Seville Parks
Attorney General
Clark County Clerk