

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN BRADLEY HODGES,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS, AND THE STATE OF
NEVADA,
Respondents.

No. 49255

FILED

SEP 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Steven Bradley Hodges filed an amended complaint in the district court against respondents, the Nevada Department of Corrections and the State of Nevada. In his complaint, Hodges alleged that in 2004, while incarcerated at the Nevada State Prison (NSP) in Carson City, a prior workers' compensation claim was reopened for arthritis in his left wrist and Dr. Richard Long was assigned as his treating physician. Later that year, Hodges asserted, Dr. Long recommended that Hodges undergo surgery on his left wrist. Although Hodges informed NSP personnel of the impending surgery, he was transferred to the High Desert State Prison in Southern Nevada in March 2005, before any surgery took place.

Hodges' complaint further provides that he was seen by a physician at the High Desert State Prison in April 2005, who prescribed medication and recommended that Hodges be transferred back to Carson

City to continue treatment with Dr. Long.¹ According to Hodges, the requested transfer ultimately (after an appeal to the prison director) was denied, and Hodges was informed that he would need to select a new workers' compensation physician, or else his claim would be closed. Hodges refused to select a new physician. When he was eventually transferred back to Carson City, he alleged, he was not allowed to continue treatment with Dr. Long because treatment had been denied for more than ninety days, and thus he had to request that a new physician be assigned.

Due to respondents' actions, Hodges asserted, he was forced to endure prolonged pain and physical suffering. As a result, in his complaint, he specified claims for negligence with respect to respondents' refusal to transfer him back to Carson City and permit him to treat with his treating physician, and for violating his right to access medial treatment under NRS 616C.090, which governs the selection of treating physicians for workers' compensation claims.

Respondents filed a motion to dismiss Hodges' complaint, asserting that NRS 616C.090 imposed no duty upon them, and that in any case, by Hodges' own assertions, any damages claimed by him were not due to respondents' actions but rather caused by his own refusal to select a new treating physician. Although Hodges opposed the motion, the district court dismissed his complaint, concluding that NRS 616C.090 created no duty under which respondents were to provide Hodges with access to a specific physician or to preclude his transfer. The district court also noted

¹Hodges also alleged that in May and June 2005, he requested an appointment with the High Desert State Prison physician five times, but was refused.

that, so long as medical care remained available with respect to Hodges' workers' compensation claim, which according to the complaint it was, respondents retained discretion to transfer him. Hodges has appealed and timely filed a civil proper person appeal statement, and as requested, respondents have timely filed a response.

We rigorously review a district court order dismissing a complaint under NRCP 12(b)(5) for failure to state a claim upon which relief may be granted.² For this purpose, a complaint's factual allegations are liberally construed, with every fair inference drawn in favor of the non-moving party, and the complaint is properly dismissed only when it appears that the plaintiff could prove no set of facts that, if accepted as true, would entitle him to relief.³

Here, we conclude that the district court properly determined that, based on his allegations, Hodges could not prove any set of facts that would entitle him to relief. As Hodges conceded below, NRS 616C.090 imposes no duty on respondents to ensure that he remain with a specific physician. Indeed, Hodges has no absolute right under that statute to remain with a specific physician.⁴ Further, under NRS 209.331, "[a]ll decisions regarding the medical evaluation or treatment of an offender, including, but not limited to, whether the offender needs to see a provider of health care outside of the prison, whether to change providers of health

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

³Id.

⁴Valdez v. Employers Ins. Co. of Nev., 123 Nev. ___, ___, 162 P.3d 148, 154 (2007); see also NRS 616C.090(3) (describing the procedure by which to obtain a new treating physician upon moving to a different county).

care and whether an offender will receive a course of treatment, are within the discretion of the Director or his designee.”

Nevertheless, Hodges asserts that he stated a claim with respect to respondents’ interference with his High Desert State Prison physician’s treatment and recommendation that he be transferred to Carson City to resume treatment with Dr. Long. Based on the federal authority Hodges cites to, it appears that he relies on the Federal Civil Rights Act, under 42 U.S.C. § 1983, in support of this argument.⁵

Courts generally refrain from interfering with prison administration, unless intervention is clearly necessary to protect an inmate’s constitutional rights.⁶ Consequently, inmate complaints asserting inadequate medical care under § 1983 are maintainable only to the extent that the allegations therein rise to a level of cruel and unusual punishment that violates the Eighth Amendment, and complaints alleging mere negligence are subject to dismissal for failure to state a claim.⁷ In this context, the United States Supreme Court has defined “cruel and unusual punishment” as deliberate indifference to inmates’ serious medical needs, including intentionally delayed access to medical care, which constitutes “unnecessary and wanton infliction of pain.”⁸ To state

⁵See Estelle v. Gamble, 429 U.S. 97 (1976); Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970).

⁶See, e.g., Martinez, 443 F.2d at 923.

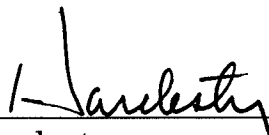
⁷Id. (explaining that complaints brought under the Civil Rights Act must “suggest the possibility of some conduct that shocks the conscience or barbarous act” (internal quotations and citations omitted)).

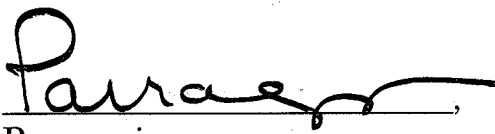
⁸Estelle, 429 U.S. at 104-05 (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)).

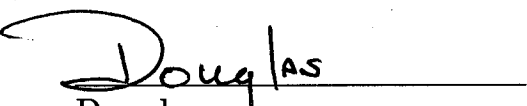
a cognizable claim, an inmate “must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.”⁹

Here, however, we need not determine whether Hodges’ allegations rise to the level needed to state a cognizable claim under § 1983, because Hodges failed to name any individual parties in his complaint. Instead, Hodges’ complaint names as defendants the State and a state entity, which cannot be held liable under § 1983.¹⁰ Accordingly, as Hodges failed to state a claim upon which relief can be granted, we affirm the district court’s order dismissing Hodges’ complaint.

It is so ORDERED.¹¹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁹Id. at 106.

¹⁰Northern Nev. Ass’n Injured Workers v. SIIS, 107 Nev. 108, 114, 807 P.2d 728, 732 (1991) (“[N]either states nor their officials acting in their official capacities are persons under 42 U.S.C. § 1983 and therefore neither may be sued in state courts under the federal civil rights statutes.”); see also Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989).

¹¹In light of this order, Hodges’ motion for an injunction pending appeal is denied as moot.

cc: Hon. James Todd Russell, District Judge
Steven Bradley Hodges
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk