

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN MICHAEL COX,  
Appellant,  
vs.  
E.K. MCDANIEL; E. WHORTON; A.  
ENDEL; R. CHAMBLIS; DR. BISHOP;  
T. D'AMICO; BOJA LEMICH; SGT.  
PRINCE; CASE WORKER TRIPP; LT.  
MESSICK; AND R. WILLIAMS,  
Respondents.

No. 49637

**FILED**

NOV 20 2007

JANEVTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order striking appellant's complaint and dismissing his action. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant Steven Michael Cox, an inmate, filed a civil complaint in the district court, seeking monetary damages based on his allegations that respondents (1) improperly charged him \$50 to replace a mattress, (2) adopted a regulation requiring that unauthorized property have a value of \$50 or more to be eligible to "mail out," undervalued two of his books, and then confiscated those books without giving him the option of mailing them out of the prison, and (3) damaged two of his boxes while putting them through an x-ray machine. Cox also sought monetary damages and injunctive relief based on his allegations that respondents (1) served him "unhealthy, non-nutritional and unsanitary" food, without gravy, causing him to "starve" daily; (2) forced him to use sink water for his coffee and served him powdered milk, causing him to suffer stomach problems, and denied his medical request for liquid milk, (3) terminated his prescribed medicine as a retaliatory measure, and denied his request

for medical relief, (4) denied his suggestions and grievances concerning television privileges, and (5) denied him his annual medical exam.

Respondents filed an NRCP 12(e) motion for a more definite statement, asserting that the allegations in Cox's complaint were so vague or ambiguous that they could not frame a responsive pleading. In particular, respondents explained that Cox had failed to satisfy the requirements for filing a complaint under NRS 41.010, which governs claims against the state for overpayment refunds, and, with regard to any negligence-based claims, Cox's complaint failed to set forth allegations establishing a legal duty owed to Cox by each respondent.

The district court granted respondents' motion, allowing Cox thirty days to file a more definite statement. In response, Cox filed a motion for clarification, asking for indulgence in litigating his action and stating that a medical malpractice statute and NRS 197.200 (providing relief from "oppression under the color of office") established additional support for his claims. Cox asked for thirty more days to comply with the court's order if those statutes did not constitute a more definite statement.

Approximately two months later, respondents filed a motion to strike Cox's complaint for failure to comply with the court's order for a more definite statement. Cox opposed the motion, arguing that he had set forth specific facts to support his causes of action and alternatively asking for an additional thirty days to comply with the court's order or to amend his complaint by adding a civil rights claim under 42 U.S.C. § 1983.

Without addressing Cox's requests for clarification, for an extension of time, and for leave to amend his complaint as a civil rights action, the district court entered an order granting respondents' motion to strike and dismissing with prejudice Cox's action. Cox appeals.

Orders of dismissal are subject to rigorous review by this court.<sup>1</sup> Under NRCP 8(a), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>2</sup> In situations in which the “defendants feel that certain allegations in the complaint are not sufficiently focused to permit a definite answer, the defendants may move for a more definite statement under NRCP 12(e).”<sup>3</sup> If the court grants a motion for a more definite statement, and the plaintiff fails to comply, the court may strike the pleading “or make such order as it deems just.”<sup>4</sup> Further, under NRCP 41(b), the district court has authority to impose appropriate sanctions for a plaintiff’s failure to comply with a court order, including dismissal of the plaintiff’s action.<sup>5</sup>

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<sup>1</sup>Shoen v. SAC Holding Corp., 122 Nev. 621, \_\_\_, 137 P.3d 1171, 1180 (2006); see also J.A. Jones Constr. v. Lehrer McGovern Bovis, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (noting that a “heightened standard of review” applies to dismissals with prejudice under NRCP 41(b)).

<sup>2</sup>Liston v. Las Vegas Metro. Police Dep’t, 111 Nev. 1575, 1578 n.6, 908 P.2d 720, 723 n.6 (1995); see Branda v. Sanford, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981) (explaining that because Nevada is a “notice pleading” jurisdiction, “pleadings are to be construed liberally so as to do substantial justice”) (internal citation omitted).

<sup>3</sup>Mays v. District Court, 105 Nev. 60, 63, 768 P.2d 877, 879 (1989). See id. (noting also that defendants who are perplexed by a complaint’s allegations may simply deny the allegations under NRCP 8(b)).

<sup>4</sup>NRCP 12(e).

<sup>5</sup>See Pardee v. Moses, 605 F.2d 865, 866 (5th Cir. 1979); see also NRCP 41(b) (providing that a court may dismiss an action for a plaintiff’s failure to follow a court order); Mangan v. Weinberger, 848 F.2d 909, 911 (8th Cir. 1988) (noting that under the federal rules of civil procedure, a complaint that fails to comply with FRCP 8(a) “may be dismissed with

*continued on next page . . .*

When an effort is made to comply with an order for a more definite statement, the insufficiency of the effort does not automatically justify dismissal of the action with prejudice.<sup>6</sup> Generally, another opportunity to adequately comply with the order is appropriate,<sup>7</sup> or, even when dismissal might be an appropriate sanction, the dismissal should be without prejudice, as it does not foreclose a plaintiff from filing a new suit. Accordingly, because dismissal with prejudice is a harsh and permanent sanction that deprives a plaintiff of the opportunity to pursue his claim, dismissals with prejudice are reserved for the most egregious cases.<sup>8</sup>

Here, upon review of the record, Cox's civil proper person appeal statement, and respondents' response, we conclude that the district court's dismissal of Cox's action with prejudice was too harsh a sanction, given Cox's apparent good faith attempt to comply with the court's order and his request for leave to amend his complaint. As noted above, Cox made an effort to respond to the court's order by filing a motion for clarification, in which he attempted to make a more definite statement by bolstering his claims with additional legal bases, as respondents requested, and by alternatively requesting more time to correct any

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*... continued*

prejudice pursuant to [FRCP] 41(b) after allowing time to file an amended complaint").

<sup>6</sup>See Pardee, 605 F.2d at 866-67; Schaedler v. Reading Eagle Publication, Inc., 370 F.2d 795 (3d Cir. 1967).

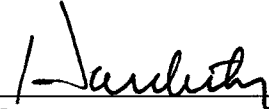
<sup>7</sup>See Pardee, 605 F.2d at 866-67; Schaelder, 370 F.2d at 798-99.

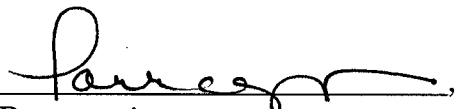
<sup>8</sup>See Esworthy v. Williams, 100 Nev. 212, 214, 678 P.2d 1149, 1150 (1984).

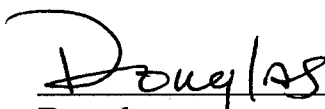
defects.<sup>9</sup> Additionally, in response to respondents' motion to strike, Cox asked the court for leave to amend his complaint as a civil rights action. Therefore, the remedy of dismissal with prejudice was not justified under the circumstances.

Accordingly, while we make no judgment on the merits of any of Cox's claims, the order dismissing Cox's complaint with prejudice is reversed, and the matter is remanded to the district court for further proceedings.

It is so ORDERED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>9</sup>Nothing in the record indicates that Cox's effort to comply with the district court's order was not attempted in good faith. See Schaedler, 370 F.3d at 798-99.

<sup>10</sup>Although Cox filed a proper person transcript request form, requesting transcripts from purported September 6, 2006 through June 12, 2007 hearings, it appears from the district court's order and the record that the matter below was submitted and decided without a hearing. Accordingly, Cox's request for transcripts, and his June 28, 2007 motion for waiver of transcript fees and July 6, 2007 motion to amend his transcript request form, are denied.

As Cox has complied with the requirements of this court's pilot program for proper person civil litigants, and because Cox's requests for relief related to other matters are outside of the scope of this appeal, his October 2, 2007 motion for adequate legal supplies is denied. Cox's October 22, 2007 request for submission of that motion is denied as moot.

cc: Hon. Dan L. Papez, District Judge  
Steven Michael Cox  
Attorney General Catherine Cortez Masto/Carson City  
White Pine County Clerk