IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MICHAEL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA, BY AND THROUGH DEAN HELLER, ITS SECRETARY OF STATE,
Respondent.

No. 49736

FILED

APR 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an action to recover civil fines for failure to file required election reports. First Judicial District Court, Carson City; William A. Maddox, Judge.

Respondent filed this action to recover civil fines from appellant pursuant to NRS 294A.420, based on his failure to file contribution and expense reports. Under NRS 294A.420(1), the state must provide notice to the party in violation prior to recovery of the fines. Respondent moved for summary judgment, outlining appellant's failure to file the required reports and showing that notice of this failure was provided to appellant. In opposition, appellant argued that the notice was improper because the state sent the notices to the address he provided on his declaration for candidacy forms and that address had been ruled in an earlier court case as not his legal address. The district court granted summary judgment in favor of respondent.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.[1] Once the movant has properly supported the summary judgment motion, the non-moving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment.[2] We review an order granting summary judgment de novo.[3]

Appellant argues that the district court improperly granted summary judgment because there were material questions of fact regarding whether there was proper service of the state's notification of his failure to file the necessary election reports as required under due process. The United States Supreme Court has held that "due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"[4]

Appellant claims that the state knew that the address appellant had provided on his candidacy forms was incorrect, based on a

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[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[2]Id. at 731, 121 P.3d at 1030-31; NRCP 56(e).

[3]Wood, 121 Nev. at 729, 121 P.3d at 1029.

[4]Jones v. Flowers, 547 U.S. 220, 226 (2006) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

ruling in a prior case that this address was not his legal address. As a result of this knowledge, appellant asserts, notices mailed to this address were not reasonably expected to reach appellant, and were therefore insufficient. We find that this argument lacks merit. Appellant provided this address in sworn documents submitted to the secretary of state for purposes of seeking election to a public office. The prior court case only determined the legal address of appellant for purposes of running for a particular public office; no determination was made as to whether appellant lived at this address or received mail there. Therefore, the prior court decision did not provide the state with knowledge that appellant would not receive any notice mailed to the address that appellant himself had provided to the secretary of state. No violation of due process or error by the district court in granting summary judgment occurred.

In his reply brief on appeal, appellant attempts to argue that notice was improper because the state received knowledge that the notices would not reach him because the notices were sent by certified mail and would have been returned as undeliverable. Appellant, however, failed to raise this argument below. Therefore, we need not address this argument on appeal.[5] Furthermore, appellant cannot rely on this argument to challenge the summary judgment order, as he did not present this argument in his opposition to the motion for summary judgment. Thus he

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[5]Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (citing Montesano v. Donrey Media Group, 99 Nev. 644, 650 n.5, 668 P.2d 1081, 1085 n.5 (1983)).

failed to meet his burden to avoid summary judgment.[6] Accordingly, we conclude that summary judgment was properly granted and

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Cherry

_____, J.
Saitta

cc: Hon. William A. Maddox, District Judge
Allen Lichtenstein
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk

[6]Wood, 121 Nev. at 731, 121 P.3d at 1030-31.