

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL STEVE COX,
Appellant,

vs.

WARDEN, ELY STATE PRISON, E.K.
MCDANIEL; MS. BROOKS; A. ENDEL;
DR. S. MACARTHUR; MS. BOJA
LEMICH; DR. R. BARRISTER; D.
ROSENBERG; S. ROUNDY; S. SMITH;
C. TRIPP; SGT. HOUSTON; C.C.
MASTO; E. OULHE, III; C.E.
HEMINGWAY; A.G. PERALTA; G.W.
HORTON; D. MCNEELY; D. REX
WINKLE; AND G. CHANOS,
Respondents.

No. 53874

FILED

FEB 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

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

Appellant Michael Steve Cox, an inmate, filed a 42 U.S.C. § 1983 civil rights complaint in the district court, seeking monetary damages for various alleged unconstitutional violations of prison regulations. 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. The district court granted respondents' motion, giving Cox an opportunity to cure the deficiencies in the complaint. The court noted that failure to do so would result in the dismissal of Cox's complaint.

Thereafter, Cox filed an amended complaint, seeking monetary damages based on his allegations that respondents, among other

things, (1) denied him prescribed ambulatory assistance in retaliation for filing a lawsuit against prison officials; (2) denied his request for medical relief as a retaliatory measure; (3) falsely claimed that he refused a medical exam; (4) have yet to respond to grievances he filed three years ago; (5) serve him contaminated powdered milk, causing him numerous medical issues, despite his medical request for liquid milk; (6) serve a prison diet that has caused him severe health complications and is in violation of the prison's diet regulations; (7) have ignored his repeated requests to remedy the prison diet, in violation of prison regulations; (8) cut his mattress as a retaliatory measure, costing him \$103 to replace the damaged mattress; and (9) placed illegal contraband in his mattress as a retaliatory measure. But, citing Cox's failure to adhere to the court's previous order, the district court sua sponte dismissed Cox's action with prejudice. The court reasoned that Cox did very little to "to make the document understandable," and that the document remained "confusing" and "disjointed." Cox appeals.

Orders of dismissal are subject to rigorous review by this court. Shoen v. SAC Holding Corp., 122 Nev. 621, 634-35, 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 involuntary dismissals with prejudice under NRCP 41(b)). Under NRCP 8(a), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Liston v. Las Vegas Metro. Police Dep't, 111 Nev. 1575, 1578 n.6, 908 P.2d 720, 723 n.6 (1995); see also 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 quotation omitted)). 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).” Mays v. District Court, 105 Nev. 60, 63, 768 P.2d 877, 879 (1989) (noting also that defendants who are perplexed by a complaint’s allegations may simply deny the allegations under NRCP 8(b)). 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.” NRCP 12(e). 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. See Pardee v. Moses, 605 F.2d 865, 866 (5th Cir. 1979); Mangan v. Weinberger, 848 F.2d 909, 911 (8th Cir. 1988) (noting that under the analogous federal rules of civil procedure, a complaint that fails to comply with Rule 8(a) “may be dismissed with prejudice pursuant to [Rule] 41(b) after allowing time to file an amended complaint”).

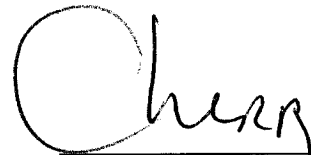
When an effort is made to comply with an order for a more definite statement, however, the insufficiency of the effort does not automatically justify dismissal of the action with prejudice. See Pardee, 605 F.2d at 866-67; Schaedler v. Reading Eagle Publication, Inc., 370 F.2d 795 (3d Cir. 1967). Generally, another opportunity to adequately comply with the order is warranted. See Pardee, 605 F.2d at 866-67; Schaedler, 370 F.2d at 798-99. Accordingly, because dismissal with prejudice is a harsh and permanent sanction that deprives a plaintiff of the opportunity to pursue his claims, dismissals with prejudice are reserved for the most

egregious cases. See Esworthy v. Williams, 100 Nev. 212, 214, 678 P.2d 1149, 1150 (1984).

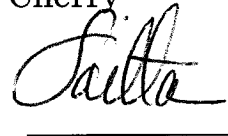
Here, upon our review of the record, Cox's civil proper person appeal statement, and respondents' response, we conclude that the district court's dismissal of Cox's action with prejudice was too harsh a sanction, given Cox's apparent good faith attempt to comply with the court's order. As noted above, Cox made an effort to respond to the court's order by filing an amended 42 U.S.C. § 1983 complaint, in which he attempted to make, and at least partially succeeded in making, a more definite statement, as respondents requested. Indeed, respondents were able to answer some of the claims asserted therein. Therefore, the remedy of dismissal with prejudice was not justified under the circumstances.

Accordingly, while we make no decision regarding the merits of any of Cox's claims, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings on Cox's complaint.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

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