

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,
Appellant,
vs.
JOHN SLANSKY; BILL DONAT; E.K.
MCDANIEL; ROBERT BAYER;
DARLENE MOORE; AL PERALTA;
AND SUSAN HUMAN,
Respondents.

No. 56424

FILED

APR 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingels*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment after a bench trial in a civil rights action. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant, a prisoner, filed a complaint against respondents and other defendants, primarily alleging violations of his due process rights.¹ In particular, appellant asserted that, after he was charged restitution for his involvement in injuring another prisoner, respondents improperly increased the restitution amount without providing him with notice or a hearing as to the increased amount. On appeal, appellant has raised a number of arguments, which we now address in turn.

First, appellant contends that the district court abused its discretion when it delayed the progress of his case for nine years.

¹The district court entered judgment in favor of respondents Robert Bayer, Darlene Moore, and Susan Human prior to trial. Appellant has not made any arguments on appeal concerning the judgment in favor of these respondents.

Although there were a few periods of unexplained, extended delay, motions were pending and the case was progressing during much of the time that it was in the district court. Regardless, as appellant has not explained how he was prejudiced by the delay of his case, the delay does not present a basis for reversal. See NRCP 61 (providing that “[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties”).

Second, appellant argues that the district court abused its discretion and denied him adequate access to the court by declining to order prison officials to extend him credit for copying beyond that generally allowed to prisoners. Appellant has not, however, explained how the denial of credit for copying hindered his access to the courts. Cf. Jones v. Franzen, 697 F.2d 801, 803 (7th Cir. 1983) (“To make out a claim under section 1983 based on denial of copying privileges [a prisoner] has to show that the denial prevented him from exercising his constitutional right of access to the courts.”). In particular, the record establishes that appellant was able to file his complaint, along with various motions and timely responses to respondents’ filings, and to appear at trial prepared with copies of each of the documents that he sought to introduce as evidence. Thus, he has not shown that the district court hindered his right of access to the court by denying his motion for additional copy credits. See id.

Third, appellant asserts that the district court abused its discretion by failing to rule on his motions to compel production of documents. Contrary to appellant’s claim that the district court did not decide these motions, the record includes two orders entered on November 5, 2009, denying appellant’s motions to compel the production of documents. Moreover, the record establishes that the district court acted

within its discretion in denying these motions, as appellant's first motion was rendered moot when respondents provided responses to appellant's discovery requests, and his second motion sought production of documents that were not relevant to the issues before the court. See Matter of Adoption of Minor Child, 118 Nev. 962, 968, 60 P.3d 485, 489 (2002) (recognizing that discovery matters are within the sound discretion of the district court).

Fourth, appellant argues that the district court abused its discretion by declining to sanction respondents for opposing appellant's motion to set a trial date and asking the court to dismiss the case because, in doing so, respondents falsely asserted that appellant had not previously moved to set a trial date. See Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (providing that this court reviews the district court's decision regarding NRCP 11 sanctions for an abuse of discretion). Although respondents incorrectly stated in their opposition to appellant's motion to set a trial date that appellant had not previously moved the court to set a trial date, the statement was incidental to the basis for respondents' opposition and request for dismissal, and the argument requesting dismissal on the ground that more than five years had passed since the filing of the complaint was properly submitted to the district court. See NRCP 41(e) (requiring dismissal of an action that is not brought to trial within five years after the filing of the complaint, except where the parties have stipulated in writing to extend the time for trial).

Fifth, appellant contends that the district court failed to place the witnesses under oath at trial. This contention is belied by the record, however, as the trial transcripts indicate that each witness was placed under oath when called to the stand to testify.

Sixth, appellant asserts that he was denied the right to a jury trial. As an initial matter, it is not clear from the record that appellant filed a proper jury demand. See NRCP 38. Regardless, the record establishes that, even if a jury trial had been held, respondents would have been entitled to judgment as a matter of law pursuant to NRCP 50 for the same reason that the district court granted the judgment on partial findings under NRCP 52, particularly because appellant failed to present any evidence that respondents were personally involved in the imposition of the restitution charge or that their wrongful conduct in any way caused the charge to be imposed. See Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (explaining that a defendant may be held liable under 42 U.S.C. § 1983 if he or she was personally involved in the constitutional deprivation or if the supervisor's wrongful conduct proximately caused the constitutional violation). Thus, appellant's right to a jury trial was not affected, as the case would not have been submitted to the jury for a verdict. See NRCP 50; NRCP 61.

Seventh, appellant argues that the district court erred by failing to conclude that a due process violation had been established and set an evidentiary hearing limited to damages when respondents conceded that appellant was entitled to judgment and a damages hearing. Following the district court's denial of summary judgment on the issue of procedural due process, respondents suggested that the court enter judgment on the due process issue and hold a hearing as to damages, but the court declined to do so. Essentially, the district court found that, although appellant was entitled to due process before his restitution amount was increased, summary judgment was not proper as to respondents because appellant had not established that they were

responsible for any due process violation that may have occurred. Upon review of the record, we conclude that the district court's decision to proceed with the trial was proper. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law).

Eighth, appellant contends that the statute of limitations or the statute of repose prevents respondents from collecting the money assessed against him as restitution. The statutes of limitations and repose prevent the filing of complaints as to various causes of action after identified periods of time. See NRS 11.190; NRS 11.203-.205. These statutes did not, however, prevent the district court from adjudicating appellant's timely filed due process claims. See id. To the extent that appellant may have intended to argue that the expiration of the statutes of limitations and repose prevent respondents from filing an action against him to recover the restitution amount, that argument is not properly before this court as the action underlying this appeal does not involve any claims filed by respondents.

Finally, appellant contends that the district court abused its discretion by denying his motion for a new trial on the basis of newly discovered evidence. See Wyeth v. Rowatt, 126 Nev. ___, ___, 244 P.3d 765, 775 (2010) (providing that this court reviews a district court's decision to deny a motion for a new trial for an abuse of discretion). Appellant asserts that, after trial, he discovered evidence among respondents' defense exhibits that showed that respondents were aware of the restitution charge at issue before it was assessed to appellant's account. See NRCP 59(a)(4) (providing that the district court may grant a new trial

when there is “[n]ewly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered and produced at the trial”). Appellant stated in his new trial motion, however, that he received the evidence from respondents on the first day of trial. While appellant contended that he did not have sufficient time to study this evidence, nothing in the transcript indicates that he asked the district court for the opportunity to review the documents that were provided to him by respondents. Thus, as appellant could have produced the evidence at trial, it was not “newly discovered” for the purpose of his new trial motion. See id. Additionally, a review of the evidence shows that the documents do not, as appellant asserts, establish that respondents were aware of the restitution charge prior to its imposition. Therefore, the evidence also was not material, see id., and the district court did not abuse its discretion by denying the motion for a new trial.

Because none of appellant’s claims of error provides a basis for reversal, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Steve L. Dobrescu, District Judge
Miguel Angel Ramirez
Attorney General/Carson City
White Pine County Clerk