

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,
Appellant,
vs.
ALICIA LERUD; CAROL NELSEN;
AND PATRICIA REEVES,
Respondents.

No. 60089

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING*

This is a proper person appeal from a district court judgment on the pleadings in a civil rights action. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Proper person appellant instituted the underlying 42 U.S.C. § 1983 action against respondents. Appellant's complaint alleged that respondents violated his constitutional rights in a different lawsuit that he filed in justice court by prohibiting him from proceeding *in forma pauperis* on appeal. Appellant's complaint specified that he was seeking money damages and injunctive relief with respect to each of the three respondents and that he was suing each respondent in their individual capacities and in their official capacities. The district court granted judgment on the pleadings in favor of respondents with respect to all of appellant's claims. This appeal followed. As explained more fully below, we affirm the judgment on the pleadings with respect to respondent Lerud, but we partially reverse the judgment with respect to respondents Nelsen and Reeves.

Respondent Lerud

A motion for judgment on the pleadings "has utility only when all material allegations of fact are admitted in the pleadings and only questions of law remain." *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82,

85 (1998) (quotation omitted). Thus, “a defendant will not succeed on a motion under Rule 12(c) if there are allegations in the plaintiff’s pleadings that, if proved, would permit recovery.” *Id.* (quotation omitted). Here, the district court determined that the allegations in appellant’s complaint, even if proved, would not have established that Lerud violated appellant’s constitutional rights. Our review of appellant’s complaint demonstrates that this determination was proper.¹ Namely, appellant’s complaint makes only passing references to Lerud’s involvement in appellant’s justice court lawsuit, none of which suggest that Lerud played a role in prohibiting appellant from proceeding *in forma pauperis* on appeal.

Respondent Nelsen

As for appellant’s claims against Nelsen in her individual capacity, the district court properly granted judgment on the pleadings on the ground that Nelsen was immune from being sued. Specifically, Nelsen was entitled to absolute judicial immunity for her conduct in connection with denying appellant’s motion to proceed *in forma pauperis*. See *State v. Second Judicial Dist. Court (Ducharm)*, 118 Nev. 609, 615, 55 P.3d 420, 424 (2002) (recognizing that judges are afforded absolute immunity in connection with their judicial functions).

The district court also properly determined that Nelsen could not be sued for money damages in her official capacity. Specifically, “[t]he United States Supreme Court has held that neither states nor their officials acting in their official capacities are persons under 42 U.S.C. § 1983 and therefore neither may be sued [for money damages] in state courts under the federal civil rights statutes.” *N. Nev. Ass’n of Injured*

¹In light of this ruling, we need not address appellant’s argument that a question of fact existed as to whether Lerud was entitled to qualified immunity.

Workers v. Nev. State Indus. Ins. Sys., 107 Nev. 108, 114, 807 P.2d 728, 732 (1991). Because Nelsen was a state official, see *City of Sparks v. Sparks Mun. Court*, 129 Nev. ___, ___, 302 P.3d 1118, 1129 (2013) (recognizing that a justice court is part of the state judicial system and, by implication, is a state entity), she was not a “person” capable of being sued in her official capacity for money damages under § 1983.

Although the district court properly granted judgment on the pleadings insofar as appellant sought to recover money damages from Nelsen in her official capacity, it erred in concluding that appellant was similarly barred from seeking injunctive relief. Namely, because “official-capacity actions for prospective relief are not treated as actions against the state,” “injunctive relief against state officials acting within their official capacities is available under 42 U.S.C. § 1983.” *N. Nev. Ass’n of Injured Workers*, 107 Nev. at 116 & n.14, 807 P.2d at 733 & n.14 (quoting *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 n.10 (1989)). Thus, assuming appellant’s complaint sufficiently alleges that Nelsen violated his constitutional rights, appellant is not necessarily barred from seeking injunctive relief.²

Respondent Reeves

As with Nelsen, the district court properly determined that respondent Reeves could not be sued for money damages in her official

²In making this determination, we recognize that Congress amended 42 U.S.C. § 1983 to clarify that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted *unless a declaratory decree was violated* or declaratory relief was unavailable.” See Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, 110 Stat. 3847 (1996) (emphasis added). Because neither the district court nor the parties have addressed whether Nelsen violated a declaratory decree, we decline to do so in the first instance on appeal.

capacity. See *N. Nev. Ass'n of Injured Workers*, 107 Nev. at 114, 807 P.2d at 732; *City of Sparks*, 129 Nev. at ___, 302 P.3d at 1129. Similar to *Nelsen*, however, the district court erred in concluding that appellant was barred from seeking injunctive relief against Reeves in her official capacity. See *N. Nev. Ass'n of Injured Workers*, 107 Nev. at 116 & n.14, 807 P.2d at 733 & n.14.

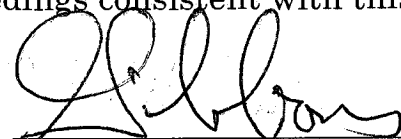
The district court further erred when it determined that appellants' claims against Reeves in her individual capacity were barred by the doctrine of absolute quasi-judicial immunity. As this court and the United States Supreme Court have recognized, absolute quasi-judicial immunity may be extended "to individuals who perform functions integral to the judicial process"—*i.e.*, to individuals who use their own "decision-making expertise" to help a judge render a decision. *Ducharm*, 118 Nev. at 616, 619, 55 P.3d at 424, 426; *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 436 (1993) ("When judicial immunity is extended to officials other than judges, it is because their judgments are functionally comparable to those of judges" (quotation and alterations omitted)).

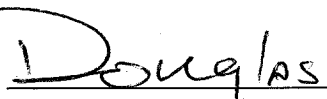
Here, appellant's complaint alleged that Reeves returned, unfiled, several notices of appeal and motions to proceed *in forma pauperis* that appellant had submitted for filing. There is nothing in respondents' motion for judgment on the pleadings to suggest that Reeves was exercising her own discretionary judgment in returning these documents, and this court's precedent clearly states that she had no discretion to do so. See, *e.g.*, *State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 767, 32 P.3d 1263, 1272 (2001) ("[A] clerk of court has a ministerial duty to accept and file documents that are in proper form and must not exercise any judicial discretion."); *Whitman v. Whitman*, 108 Nev. 949, 951, 840 P.2d 1232, 1233 (1992) (recognizing that it is a "gross dereliction" of a "ministerial duty" for a clerk of court to fail to keep an accurate record


of the date on which documents are received for filing (quotations omitted)). Thus, as Reeves was not entitled to absolute quasi-judicial immunity for her refusal to file appellant's documents, the district court erred in using this as a basis for dismissing appellant's individual-capacity claims against Reeves.

To summarize, we affirm the district court's judgment with two exceptions: (1) to the extent that it determined that appellant could not seek injunctive relief against Nelsen and Reeves in their official capacities, and (2) to the extent that it determined that the doctrine of absolute quasi-judicial immunity barred appellant from suing Reeves in her individual capacity. Because the district court did not evaluate whether appellant's complaint sufficiently alleged a violation of his constitutional rights by either of these two respondents, we decline to do so in the first instance on appeal.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

³Appellant contends that the district court improperly granted respondents' motion for judgment on the pleadings without reading appellant's opposition thereto. We have considered appellant's opposition in rendering this disposition and conclude that the district court's alleged impropriety does not warrant further reversal of the appealed-from order.

cc: Hon. Richard Wagner, District Judge
Michael Angelo Drake
Attorney General/Carson City
Pershing County Clerk