IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR JARDINE,
Appellant,
vs.
DWIGHT NEVEN, WARDEN, HIGH DESERT STATE PRISON; COLE MORROW, ASSOCIATE WARDEN; PAUL SENGEBUSCH, STOREKEEPER, HIGH DESERT STATE PRISON; T. BRUNMEIER, SENIOR C/O HIGH DESERT STATE PRISON; AND K. ROBERSON, CASEWORKER, HIGH DESERT STATE PRISON,
Respondents.

No. 61028

FILED

JAN 08 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a civil rights action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge. As directed, respondents have filed a response.

In the district court, appellant filed a civil rights complaint, which respondents moved to dismiss for failure to state a claim. Without reaching the merits of the motion to dismiss, the district court granted it pursuant to EDCR 2.20(e) on the ground that appellant had failed to oppose the motion. On appeal, appellant argues that the district court abused its discretion by dismissing the complaint on this basis because he actually had filed an opposition. Respondents assert that the dismissal was appropriate insofar as appellant's opposition was untimely and he provided no explanation for the untimeliness. Alternatively, respondents contend that dismissal was appropriate on the merits.

Under EDCR 2.20(e), an opposing party must file and serve any opposition to a motion within ten days after service of that motion.

14-00460

Respondents' motion to dismiss was served by mail on May 9, 2012. As a result, appellant's opposition was due on May 29, 2012. *See* NRCP 6(a) (explaining that in calculating a time period that is less than 11 days, Saturdays, Sundays and nonjudicial days are excluded from the calculation, and stating that if the last day of the computed period is a Saturday, Sunday, or nonjudicial day, "the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day"); NRCP 6(e) (providing that when a motion is served by mail, three days are added to the opposing party's response time).

Appellant, who is an inmate, signed his opposition on May 24, 2012, and it was actually filed in the district court on May 30, 2012. The record reflects that the district court entered an oral ruling granting the motion to dismiss at 11:37 a.m. on May 29, 2012, before appellant's opposition was actually due. *See* NRCP 6(a) (explaining that the period for filing runs until the end of the day on which a document is due). The written order dismissing appellant's complaint was then entered on June 6, 2012, after the opposition was filed in the district court. Under these circumstances, we conclude that it was an abuse of discretion for the district court to grant the motion to dismiss based on appellant's failure to file an opposition. *See* EDCR 2.20(e) (providing that the failure to serve and file a written opposition to a motion *may* be construed as an admission that the motion is meritorious).

Nevertheless, "[t]his court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason." *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. ___, ___, 245 P.3d 1198, 1202 (2010). Having reviewed the record and the parties' arguments, we conclude that dismissal was appropriate because appellant's complaint failed as a matter of law. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124

Nev. 224, 228, 181 P.3d 670, 672 (2008) (recognizing that a "complaint should be dismissed only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [him] to relief"). Initially, appellant cannot establish that he was denied the right to petition for redress of his grievances, as his complaint indicates that he filed grievances and received responses at each level of the grievance process, and that he was thereafter able to file this action in the district court. *See Lewis v. Casey*, 518 U.S. 343, 349-55 (1996) (holding that a prisoner seeking to state a denial-of-access-to-the-courts claim must demonstrate that he or she was hindered in attempting to pursue a legal claim). The fact that his grievances were denied is not a basis to state a constitutional claim. *See Etheridge v. Evers*, 326 F. Supp. 2d 818, 823 (E.D. Mich. 2004) ("Claims which are based simply on the denial of a grievance do not state a claim of constitutional dimension.").

As to appellant's due process claim, "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the. . . Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available."[1] *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Here, to the extent that appellant was improperly deprived of his property, he had an adequate post-deprivation remedy available in the form of a civil action against the state. *See* NRS 41.031; NRS 41.0322. Thus, he could not state a due process claim. *See Hudson*, 468 U.S. at 533. And although appellant separately asserted that his Fourth Amendment right to be free from an illegal seizure was

[1]While appellant also invoked the Fifth Amendment in asserting his due process claim, that provision is made applicable to the states through the Fourteenth Amendment. *See* U.S. Const. Amend. XIV, § 1.

violated, this allegation was essentially a restatement of his due process claim. We therefore conclude that his illegal seizure claim fails for the same reason as his due process claim. *See id.*

Finally, the district court lacked jurisdiction to consider any state tort claim based on the facts alleged, as the value of the property at issue was well under $10,000. *See* NRS 4.370(1)(b) (providing that the justice courts have jurisdiction over actions for detaining or injuring personal property when the damage does not exceed $10,000); *see also* Nev. Const. art. 6, § 6(1) (explaining that the district courts "have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts").

Because appellant could not establish either a constitutional claim or a state tort claim under the facts alleged in the complaint, dismissal was warranted, *see Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672, and we therefore

ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Susan Johnson, District Judge
Hector Leonard Jardine
Attorney General/Carson City
Eighth District Court Clerk