

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH MANUEL CABERO,
Appellant,
vs.
JAMES G. COX,
Respondent.

No. 64769

FILED

MAY 27 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Williams*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing a civil rights action. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant, an inmate who alleged he has been medically classified by the Nevada Department of Corrections (the NDOC) as having HIV and AIDS, filed a district court complaint asserting that, between March 19, 2011, and March 18, 2013, the NDOC had a policy of prohibiting inmates diagnosed with HIV or AIDS from working in any prison "canteen, culinary, food services, infirmary, or allied health services" position.¹ In his complaint, appellant further asserted this policy violated his rights under the Americans with Disabilities Act, 42 U.S.C. §§

¹Although appellant's complaint named a number of defendants, the case appeal statement submitted by the district court clerk on appeal did not individually list each of these defendants as respondents in this appeal, and thus, only respondent James G. Cox has been identified as a respondent in the docket of this appeal. Nevertheless, our decision to affirm the district court's dismissal of appellant's complaint applies equally to the dismissal of the underlying case as to the remaining defendants as it does to respondent Cox.

12101-12213 (2006) (the ADA), and the Federal Rehabilitation Act, 29 U.S.C. §§ 701-7961 (2006), as well as his right to equal protection under the law.² Ultimately, the district court concluded the defendants were entitled to qualified immunity with regard to appellant's claims that he was precluded from working in certain areas based on his HIV status, and thus, the court dismissed those claims. This appeal followed.

"The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."³ *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted); *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 359-60, 212 P.3d 1068, 1076 (2009) ("Generally, qualified immunity applies to protect state officials from civil liability for damages resulting from discretionary acts, so long as those acts do not violate clearly established statutory or constitutional rights." (internal quotation marks omitted)). When a law or right is clearly established, a defendant's act will be protected by qualified immunity if the defendant

²Appellant raised several additional claims he does not address on appeal. As a result, we conclude he has waived those claims, and we do not address them in this order. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. ___, ___ n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived).

³Because appellant concedes that the NDOC has changed its policy regarding restrictions on work opportunities for inmates with HIV and AIDS, injunctive relief directing the NDOC to lift the restrictions is not at issue. Moreover, although appellant requested certain other injunctive relief in his complaint, he has not raised any arguments on appeal regarding that relief, and thus, we conclude he has waived any such arguments. See *Powell*, 127 Nev. at ___ n.3, 252 P.3d at 672 n.3.


“reasonably believe[d] that his or her conduct complie[d] with the law.”
Pearson, 555 U.S. at 244.

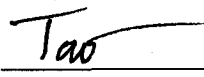
Here, at the time the policy at issue was put into place, it was clearly established that the ADA and the Rehabilitation Act applied to state prisons. See *Pa. Dep't of Corrs. v. Yeskey*, 524 U.S. 206 (1998). Nevertheless, actions brought under those acts challenging prison policies restricting inmates with HIV or AIDS from working in certain jobs and participating in certain programs had been decided in favor of the prisons with the policies at issue being upheld under both the ADA and the Rehabilitation Act. See *Onishea v. Hopper*, 171 F.3d 1289 (11th Cir. 1999) (upholding a prison policy that required inmates with HIV or AIDS to be segregated from the rest of the prison population and precluded such inmates from participating in a variety of programs); *Gates v. Rowland*, 39 F.3d 1439 (9th Cir. 1994) (upholding a prison policy preventing inmates with HIV or AIDS from working in food service jobs). Similarly, equal protection challenges to prison policies restricting inmates' participation in certain jobs and programs based on their having HIV or AIDS had also been rejected by courts prior to the relevant time period. See *Nolley v. Cnty. of Erie*, 776 F. Supp. 715, 739 (W.D.N.Y. 1991) (rejecting an equal protection claim challenging segregation of an inmate based on her HIV-positive status); *Farmer v. Moritsugu*, 742 F. Supp. 525 (W.D. Wis. 1990) (rejecting an equal protection claim challenging a prison policy precluding inmates with HIV and AIDS from working in food service jobs).

Under these circumstances, we conclude the prison officials named in the underlying action could have reasonably concluded that the policy at issue in this case, which precluded inmates with HIV or AIDS from holding certain prison jobs, was in compliance with the ADA, the

Rehabilitation Act, and appellant's right to equal protection under the law. As a result, even assuming appellant is correct that the policy violated the ADA, the Rehabilitation Act, and his equal protection rights, the defendants were nonetheless entitled to have the case dismissed because they were protected by the doctrine of qualified immunity. See *Pearson*, 555 U.S. at 244-45 (holding that qualified immunity protects an official who "reasonably believes that his or her conduct complies with the law" and that individuals "are entitled to rely on existing lower court cases without facing personal liability for their actions"); *Grosjean*, 125 Nev. at 359-60, 212 P.3d at 1076. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
Joseph Manuel Cabero
Attorney General/Carson City
Carson City Clerk