IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMARR ROWELL,
Appellant,
vs.
JAMES GREG COX; ROBERT LEGRAND; AND THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

No. 66550

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order granting summary judgment in a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant, an inmate, filed a complaint against respondents alleging they violated his First Amendment rights under the United States Constitution and his right to the free exercise of his religion under Article 1, Section 4 of the Nevada Constitution by failing to provide him with a low-sodium, soybean-free, kosher diet. In particular, the complaint asserted appellant was forced to choose between the prison's low-sodium diet and the allegedly high-sodium common fare diet,[1] and that he should have been provided his requested diet as a reasonable religious accommodation. After filing his complaint, appellant sought summary judgment on his claims, which the district court denied. Following further

[1]The common fare diet meets the dietary restrictions of many religions, including those requiring adherents to maintain a kosher diet.

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discovery, the district court ultimately granted summary judgment to respondents and denied appellant's renewed motion for summary judgment. In so doing, the court concluded the decision not to provide appellant his specially requested diet was reasonably related to the legitimate penological interests of keeping costs low and maintaining efficiency by minimizing the number of different diets provided to inmates and, therefore, did not violate appellant's right to the free exercise of his religion. This appeal followed.[2]

As an initial matter, on appeal, appellant asserts the dietary offerings provided by the prison forced him to choose between a low-sodium diet or a diet that met his religious needs, and argues the law requires that he be given the low-sodium, soybean-free, kosher diet that he requested, which satisfies both his religious and health needs. Prisons, however, are not required to provide specific individualized religious diets to inmates. *See Kahey v. Jones*, 836 F.2d 948, 950 (5th Cir. 1988) (citing *Udey v. Kastner*, 805 F.2d 1218 (5th Cir. 1986)). Relevant to the issues presented here, the *Kahey* court noted that the basis for this rule is that, if

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[2]Appellant's civil appeal statement notes his claims were brought under both the First Amendment to the United States Constitution and Article 1 of the Nevada Constitution. His appellate arguments, however, track only the analysis applicable to claims that an individual's rights under the United States Constitution have been violated and do not include any arguments related to Article 1 of the Nevada Constitution. As a result, we need not consider the validity of appellant's claims under the Nevada Constitution. *See Fanders v. Riverside Resort & Casino, Inc.*, 126 Nev. 543, 549 n.2, 245 P.3d 1159, 1163 n.2 (2010) (declining to consider an argument on the ground that it had not been raised on appeal); *Desert Chrysler-Plymouth, Inc. v. Chrysler Corp.*, 95 Nev. 640, 643-44, 600 P.2d 1189, 1190-91 (1979) (recognizing that the court's authority to consider constitutional issues sua sponte is discretionary).

one specific dietary request is granted, prisons will be inundated with similar requests, which would either result in the accommodation of such demands and placing an undue burden on the prison system or compel prisons to become "entangled with religion while drawing fine and searching distinctions among various free exercise claimants." *Id.*

Further, the United States Supreme Court has held that, "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987). In applying this rule, courts must evaluate whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it;" "whether there are alternative means of exercising the rights that remain open to prison inmates;" the impact the requested accommodation "will have on guards and other inmates, and on the allocation of prison resources generally;" and whether the "absence of ready alternatives is evidence of the reasonableness of a prison regulation" or the existence of obvious alternatives evidences an exaggerated response. *Id.* at 89-90 (internal quotation marks omitted). And the Ninth Circuit Court of Appeals has recognized that lower costs and simplifying the administration of food service may constitute legitimate penological interests that are rationally related to the decision to deny specific dietary requests not directly required by the inmate's religion. *See Shakur v. Schriro*, 514 F.3d 878, 886 (9th Cir. 2008) (making this determination but ultimately remanding the case because, among other things, there was not enough evidence regarding the additional costs imposed on the prison if it offered the inmate the more expensive religious diet).

On appeal, appellant largely fails to address the district court's *Turner* factor analysis. Instead, he simply argues cost and efficiency were not the reason his specific dietary request was not approved, and maintains no genuine issues of material fact remained regarding his assertions in this regard, such that he should have been granted summary judgment on his claims. Appellant similarly asserts that, because he introduced evidence contradicting respondents' contention that cost and efficiency concerns formed the basis for their refusal to provide his requested diet, the district court erred in granting summary judgment. Appellant, however, provides no explanation as to what he believes respondents' actual reason for denying his requested diet was on appeal, although in the district court he argued that this decision was based on discrimination because the diets currently available to him were more costly than a previously available kosher diet.[3]

In the district court proceedings, however, appellant offered no evidence to support his assertions regarding the cost differential in these diets and actually conceded the common fare diet appeared to be less costly than the previous kosher diet. Moreover, in addressing appellant's arguments below, respondents submitted uncontroverted evidence demonstrating that the common fare menu costs approximately $1.5 million less per year than the previous kosher menu.

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[3]In the district court, appellant did present evidence a low-sodium kosher option was offered by at least one vendor, but he failed to provide evidence regarding the cost of that diet or whether that diet was ever available to inmates prior to the prison's switch to the common fare diet. He also did not assert the low-sodium kosher meals met his request for a soybean-free diet.

Under these circumstances, appellant failed to demonstrate he should have been granted summary judgment or that issues of material fact remained as to whether cost and efficiency were actually the reason for the prison's refusal to provide his requested diet. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that the grant of summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law). Thus, based on this determination and the analysis set forth above, we conclude the district court did not err in denying appellant's motion for summary judgment and granting summary judgment in respondents' favor on appellant's claims. *See id.* (stating that a district court's resolution of a summary judgment motion is reviewed de novo). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
Lamarr Rowell
Attorney General/Carson City
Carson City Clerk