

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN BENJAMIN ODOMS,
Appellant,
vs.
HIGH DESERT STATE PRISON
OFFENDER MANAGEMENT
DIVISION; ISIDRO BACA;
CORRECTIONAL OFFICER
HENDERSON (1); CORRECTIONAL
OFFICER HENDERSON (2); JANE
DOE; JOHN DOE; SGT. KIM; AND
ARTHUR LINDSEY,
Respondents.

No. 67191

FILED

AUG 3 1 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a civil matter. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Appellant John Benjamin Odoms argues the district court erred in granting the respondents' motion to dismiss his complaint. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. ___, ___, 267 P.3d 771, 774 (2011). In addressing Odoms' arguments, we must accept all of the factual allegations of the complaint as true and draw all inferences in favor of Odoms. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that, on appeal, a court rigorously reviews a dismissal for failure to state a claim, accepting all of the factual allegations in the complaint as true, and drawing all inferences in favor of the plaintiff).

First, Odoms argues the district court was biased towards the respondents because the court granted their motion to dismiss without ruling on Odoms' motions. Odoms' argument lacks merit because a district court's rulings and actions during the course of official judicial proceedings does not establish the personal bias necessary to require disqualification. See *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988). Therefore, Odoms is not entitled to relief for this claim.

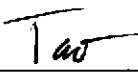
Second, Odoms argues the district court improperly considered the motion to dismiss at a hearing that Odoms was unable to attend. Odoms also asserts the hearing was improperly not conducted in public. Odoms' arguments lack merit. Because Odoms is incarcerated, he did not have a right to be personally present at a hearing concerning a civil matter. See *Hernandez v. Whiting*, 881 F.2d 768, 770-71 (9th Cir. 1989). Moreover, Odoms had notice of the hearing, submitted a written opposition to the motion to dismiss, and the district court noted Odoms had failed to request either telephonic or in-person appearance for the hearing. Under those circumstances, Odoms fails to demonstrate the district court erred by conducting a hearing without Odoms' attendance. See *Demoran v. Witt*, 781 F.2d 155, 158 (9th Cir. 1985) (concluding the district court did not abuse its discretion by denying a prisoner's request to attend a hearing because the prisoner had notice of the hearing and had filed a written opposition to the defendants' motion). In addition, Odoms' assertion that the hearing was not conducted in public is belied by the record. Therefore, Odoms is not entitled to relief for these claims.

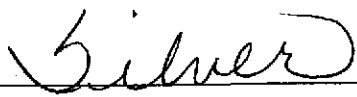
Finally, Odoms argues the district court erred by not entering a default judgment against the respondents. Odoms appears to assert he

was entitled to a default because the respondents did not make a proper appearance in this matter. Odoms' argument lacks merit. "[A] default judgment normally must be viewed as available only when the adversary process has been halted because of an essentially unresponsive party." *Christy v. Carlisle*, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978). The respondents initially appeared in this matter by removing it to federal court and thereafter properly defended against the action after it was remanded to state court. Moreover, Odoms did not properly seek a default or default judgment before the district court. See NRCP 55(a), (b)(2); *Epstein v. Epstein*, 113 Nev. 1401, 1404-05, 950 P.2d 771, 772-73 (1997). Therefore, Odoms is not entitled to relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Joanna Kishner, District Judge
John Benjamin Odoms
Attorney General/Carson City
Eighth District Court Clerk