

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES ANTHONY DAVIS,
Appellant,
vs.
DWIGHT W. NEVEN, WARDEN; ERIC
BURSON, LIEUTENANT; LAWRENCE
PANOZZO, SERGEANT; ROBERT
OWENS, SERGEANT; AND S. L.
FOSTER, DEPUTY DIRECTOR,
Respondents.

No. 67392

FILED

MAY 27 2015

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

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order dismissing a torts and civil rights action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant filed the underlying complaint against respondents based on actions they took pursuant to their positions as employees of the State of Nevada Department of Corrections. The complaint stated that the case was filed as both a torts action under NRS 41.0322 and a civil rights action under 42 U.S.C. § 1983. On motion of respondents and after consideration of an opposition filed by appellant, the district court dismissed appellant's complaint for failure to timely serve process pursuant to NRCP 4(i), which provides that an action must be dismissed without prejudice as to any defendant not served with the summons and complaint within 120 days of the filing of the complaint. This appeal followed.

On appeal, appellant generally argues that the district court improperly found appellant failed to serve process despite the fact that Amanda White, a person designated by the Attorney General to receive service of process, had been served with the summons and complaint. To the extent appellant's complaint stated tort claims against respondents based on their actions as State employees, NRS 41.031(2) required the summons and complaint to be served on both the Attorney General, or a person designated by the Attorney General, and "[t]he person serving in the office of administrative head of the named agency." While the record demonstrates Ms. White accepted service of appellant's summons and complaint on behalf of the Attorney General, appellant did not provide any evidence demonstrating "[t]he person serving in the office of administrative head" of the Nevada Department of Corrections was served. Thus, under NRS 41.031(2) and NRCP 4(i), the district court properly dismissed any tort claims that were included in the complaint based on appellant's failure to properly serve process.

To the extent that appellant's complaint stated claims against respondents under 42 U.S.C. § 1983, however, those claims could not be brought against the State, *see Will v. Mich. Dep't of State Police*, 491 U.S. 58, 64-70 (1989) (concluding that states are not "persons" within the meaning of 42 U.S.C. § 1983, and consequently, that an individual cannot maintain a § 1983 action against a state or a state official acting in his or her official capacity), and instead, were required to be brought against respondents in their individual capacities. *See Hafer v. Melo*, 502 U.S. 21, 27-28 (1991) (explaining that 42 U.S.C. § 1983 actions may be maintained against state officials in their personal or individual capacities, even if the

actions were taken as a part of their official duties). Thus, we conclude the district court erred by applying NRS 41.031(2) and NRS 41.0337, which address tort claims against the State, and the associated service requirements for actions brought against the State, to appellant's civil rights claims. Nevertheless, we may affirm a district court's decision that reaches the right result, even when it does so for the wrong reasons. See *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

Although his civil appeal statement is somewhat unclear, it seems appellant may be asserting he served the summons and complaint by mailing these documents to respondents. NRCP 4(d)(6), however, requires service on an individual to be made by delivering the summons and complaint to that individual personally, by leaving copies of the summons and complaint at the individual's residence with a person of suitable age and discretion who also lives there, or "by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." This rule does not authorize service by mail, and thus, insofar as appellant asserts service was properly made on respondents by mail, this argument lacks merit. See NRCP 4(d)(6).

Citing 28 U.S.C. § 1915(d), which provides, in pertinent part, that in a case involving a litigant proceeding in forma pauperis, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases," appellant argues that submitting a waiver of service of process is a duty that must be performed under this provision. Section 1915, however, addresses service for litigants proceeding in forma pauperis in federal actions, see 28 U.S.C. § 1915(a)(1) (permitting a "court


of the United States" to authorize a litigant to proceed without the prepayment of fees), and thus, even assuming appellant is correct that the statute requires a State officer to waive service of process, that provision does not apply to appellant's action before the Nevada district court.

Next, insofar as appellant's arguments generally could be read as asserting that an officer of the court was required to serve process on his behalf because he is incarcerated and is proceeding in forma pauperis, appellant presented no evidence to demonstrate he ever requested that service be made on any of the individual defendants by an officer of the court. As a result, this assertion cannot provide a basis for reversing the district court's decision. See NRCP 4(i) (requiring dismissal of any defendant who is not served with process within 120 days after the filing of the complaint); *Hafer*, 502 U.S. at 27-28 (requiring 42 U.S.C. § 1983 actions to be maintained against state officials individually).

Finally, appellant contends service on respondents was properly made because Ms. White was designated to receive service of process. While Ms. White was designated to receive service of process on behalf of the Attorney General, nothing in the record demonstrates she was authorized to receive service of process on behalf of the individual defendants. To the contrary, the receipt of service initialed by Ms. White demonstrating she had accepted service on behalf of the Attorney General specifically stated that such service did not constitute service on any individual defendant. Thus, as appellant did not present any evidence to demonstrate he took any steps to have the individual respondents served with the summons and complaint, we conclude the complaint was properly

dismissed without prejudice pursuant to NRCP 4(i), and we therefore affirm.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
James Anthony Davis
Attorney General/Carson City
Eighth District Court Clerk