

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,  
Appellant,  
vs.  
WASHOE COUNTY; THE STATE OF  
NEVADA; RENE ROMERO; WASHOE  
COUNTY CRIME LAB; AND JEFFREY  
RIOLO,  
Respondents.

No. 67775

**FILED**

AUG 31 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order granting judgment on the pleadings in a torts action. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant Frank Milford Peck argues the district court erred in granting the respondents' motion for judgment on the pleadings. Under NRCP 12(c), the district court may grant a motion for judgment on the pleadings when the material facts of the case "are not in dispute and the movant is entitled to judgment as a matter of law." *Bonicamp v. Vazquez*, 120 Nev. 377, 379, 91 P.3d 584, 585 (2004). Because an order granting a motion for judgment on the pleadings presents a question of law, our review of such an order is de novo. *Lawrence v. Clark Cnty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011). As with a dismissal for failure to state a claim, in reviewing a judgment on the pleadings, we will accept the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party. *Cf. Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev.

224, 228, 181 P.3d 670, 672 (2008) (setting forth the standard of review for an order dismissing a complaint under NRCP 12(b)(5)).

First, Peck argues the district court erred in concluding respondents Rene Romero and Jeffrey Riolo were entitled to absolute quasi-judicial immunity. Peck's argument lacks merit. Peck alleged in his complaint that Romero and Riolo, in their capacity as governmental employees, testified as DNA expert witnesses in his criminal law proceedings and Peck asserted they provided false testimony regarding DNA testing. "[A]bsolute quasi-judicial immunity has been extended to individuals who perform functions integral to the judicial process." *State v. Second Judicial Dist. Court (Ducharm)*, 118 Nev. 609, 616, 55 P.3d 420, 424 (2002). "When a state agency or its employees provide their decision-making expertise to the court, they act as an arm of the court and are entitled to absolute quasi-judicial immunity." *Id.* at 619, 55 P.3d at 426; *see also Duff v. Lewis*, 114 Nev. 564, 569, 958 P.2d 82, 85 (1998) ("Absolute immunity is thus necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation.") (internal quotation marks omitted).

Peck's specific allegations against Romero and Riolo involved their testimony in a court proceeding as expert governmental witnesses. Therefore, Romero and Riolo are entitled to absolute quasi-judicial immunity for this matter. Accordingly, they are immune from any civil damages and are free from the burdens of litigation. *See Ducharm*, 118

Nev. at 615, 55 P.3d at 423. Therefore, the district court properly granted the respondents' motion for judgment on the pleadings.

Second, Peck argues the district court erred in granting relief to the State of Nevada, the Washoe County Crime Laboratory, and Washoe County. Peck's argument lacks merit. The district court properly dismissed the State of Nevada as a defendant because Peck did not properly invoke the State's waiver of sovereign immunity pursuant to NRS 41.031, because he did not bring his action "in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis" for Peck's suit.<sup>1</sup> NRS 41.031(2). In addition, the district court properly granted relief to the Washoe County entities because Peck did not allege the entity itself committed any wrongdoing and Peck could not establish vicarious liability

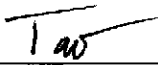
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<sup>1</sup>Peck asserts the district court should have permitted him to amend his complaint to properly name the State of Nevada as a defendant. It does not appear from the record before this court that Peck specifically moved to amend his complaint. Because Peck did not move to amend his complaint before the district court, he waived this issue. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Moreover, even assuming Peck's opposition to the State's motion to dismiss could be construed as requesting an amendment, Peck's underlying claim regarding the DNA expert witness testimony lacked merit and amendment of this nature would have been futile. *See Allum v. Valley Bank of Nevada*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993).

for a wrongful act of an employee. See NRS 41.745. Therefore, Peck is not entitled to relief for these claims.<sup>2</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

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<sup>2</sup>Peck also asserts the district court should have granted a motion for reconsideration because the respondents filed an untimely opposition, the district court failed to notice a certificate of service he included with a motion and so erred in ordering him to properly serve the defendants with the motion, and the district court erred in considering his motion for clarification “out of order” with respect to his other motions. We have considered these claims, and because we conclude the district court properly granted relief to the respondents for the reasons discussed previously, we conclude Peck is not entitled to relief for these claims.

<sup>3</sup>On June 3, 2015, Peck submitted a request for submission of his motion for leave to file pro se briefs. Peck’s motion for permission to file his opening brief was granted on May 29, 2015, and therefore, Peck’s request for submission is denied as moot.

cc: Hon. Scott N. Freeman, District Judge  
Frank Milford Peck  
Attorney General/Carson City  
Washoe County District Attorney/Civil Division  
Washoe District Court Clerk