IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES BEN FRITSCHE,
Appellant,
vs.
J. GREG COX, DIRECTOR; ROBERT LEGRAND, WARDEN; MAILROOM EMPLOYEE JOHN DOE; AND PAMELA FEIL, MAILROOM SUPERVISOR,
Respondents.

No. 68315

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting relief from judgment, which entered summary judgment in favor of the respondents in a civil rights action, and an order denying a motion to strike. Eleventh Judicial District Court, Pershing County; Michael Montero, Judge.

Appellant Charles Ben Fritsche argues the district court erred in granting the respondents' motion for summary judgment. This court reviews summary judgments de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issues of material fact remain in dispute and the moving party is entitled to judgment as a matter of law. *Id.* To withstand summary judgment, the nonmoving party cannot rely solely on general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting the claims. NRCP 56(c); *Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

First, Fritsche argues the district court erred in concluding the respondents were entitled to summary judgment for his claims alleging damages stemming from the conclusion that an item mailed to Fritsche was not authorized under the Nevada Department of Corrections' (NDOC) policy. Fritsche's argument lacks merit. The district court concluded Fritsche was not entitled to relief for his pursuit of damages because he failed to allege the respondents were personally involved with his mail and because Fritsche sued them in their official capacity. "Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); *see also Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999) (explaining a supervisor's denial of a grievance alone does not amount to an active unconstitutional action for which he or she can be held liable). A review of Fritsche's complaint reveals the district court properly granted judgment in favor of the respondents because Fritsche did not allege the respondents were personally involved in any actions related to his mail.

Moreover, we conclude the district court also properly granted judgment in favor of the respondents because they cannot be sued in their official capacities under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Therefore, Fritsche is not entitled to relief for this claim.

Second, Fritsche argues the district court erred in concluding the NDOC's decision to alter its mail policy rendered his pursuit of injunctive relief moot. Fritsche's argument lacks merit. "[I]injunctive relief is appropriate only when irreparable injury is threatened and any injunctive relief awarded must avoid unnecessary disruption to the state

agency's normal course of proceeding." *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (internal quotations and citations omitted). Under the Prison Litigation Reform Act a "court must find that the prospective relief is 'narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right,' before granting injunctive relief." *Id.* at 1129 (quoting 18 U.S.C. § 3626(a)(1)).

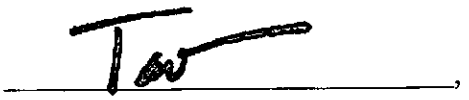
Fritsche alleged the NDOC concluded a parcel addressed to him was not authorized pursuant to its mail policy. Fritsche alleged the NDOC notified him of that decision, but pursuant to its policy, did not notify the sender of the parcel of this decision. Fritsche asserted the failure to notify the sender was an improper violation of his rights and sought an injunction requiring the NDOC to notify senders when mail is rejected by the NDOC. During the litigation of this matter, the respondents informed the district court the NDOC had recently altered its mail policy and that prospectively the NDOC will notify senders when incoming mail is rejected. The respondents asserted the alteration in policy rendered Fritsche's pursuit of injunctive relief moot and the district court agreed.

"[A] controversy must be present through all stages of the proceeding, and even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (internal citations omitted). "A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." *Nat'l Collegiate Athletic Ass'n v. Univ. of Nevada, Reno*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981).

The NDOC's alteration of its mail policy granted Fritsche the outcome he sought to gain through injunctive relief. Because there was no longer a dispute between Fritsche and the NDOC's mail policy, Fritsche's pursuit of injunctive relief did not rest upon the existing facts. Moreover, because the policy change granted Fritsche the relief he desired, Fritsche cannot demonstrate an injunction would be the least intrusive means necessary to correct a violation of his rights. *See Gomez*, 255 F.3d at 1129. Accordingly, the district court correctly determined Fritsche's request for injunctive relief was moot. Therefore, Fritsche 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. Michael Montero, District Judge
Charles Ben Fritsche
Attorney General/Carson City
Pershing County Clerk