

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSHON NICHALOS GREEN,
Appellant,
vs.
THE STATE OF NEVADA; NEVADA
DEPARTMENT OF CORRECTIONS; C.
BURSON; C.S. CHARDIN; R. ARANAS;
K. HEGGE; D. POAG; S.L. FOSTER;
AND B. WILLIAMS,
Respondents.

No. 68741

FILED

DEC 29 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Molca*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment to respondents in a civil rights and torts action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Appellant Dushon Green, an inmate, filed a complaint against respondents the State of Nevada, the Nevada Department of Corrections (NDOC), and certain NDOC employees. The complaint alleged that respondents violated Green's First, Fifth, and Fourteenth Amendment rights and committed state torts by retaliating against him, failing to protect him from other inmates, and improperly housing him in disciplinary segregation. The district court granted respondents' motion for summary judgment, stating that there were no genuine issues of fact that remained and that respondents were entitled to judgment as a matter of law. This appeal followed.

We review a district court order granting summary judgment de novo, with no deference to the findings of the district court. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and evidence demonstrate that no

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genuine issues of material fact remain and that the moving party is entitled to judgment as a matter of law. NRCP 56(c); *see also Wood*, 121 Nev. at 729, 121 P.3d at 1029. When reviewing such a motion, we must review the evidence and all reasonable inferences drawn from the evidence in a light most favorable to the nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

We first address Green's various arguments that the district court erred in granting summary judgment on his 42 U.S.C. § 1983 claims, and we conclude that the district court properly granted summary judgment on those claims. Green's complaint specifically stated that he was suing each individual defendant in their official capacity as an employee of the State of Nevada in the NDOC. Under § 1983, however, a claim may only be stated against a "person" acting under color of state law who deprives an individual of federal rights. Thus, in § 1983 actions, state officials cannot be sued in their official capacities because a state is not a "person" for the purpose of a § 1983 claim and an official capacity suit against a state official is essentially a suit against the state itself. *State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 153, 42 P.3d 233, 241-42 (2002) (citing *Will v. Mich. Dep't of State Police*, 491 U.S. 58 (1989) (providing that a suit against a state official in their official capacity is akin to a suit against the state itself, and therefore improper under § 1983)). As a result, the district court properly granted summary judgment in favor of the individual respondents being sued in their official capacities. *See id.*

Similarly, because states also are not persons for purposes of § 1983, the district court properly granted summary judgment in favor of the State and the NDOC on the civil rights claims against them. *See §*

1983; *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 605, 172 P.3d 131, 136 (2007) (holding that the State of Nevada and its entities cannot be sued under § 1983). We therefore affirm the district court's grant of summary judgment in favor of respondents on Green's § 1983 claims.¹

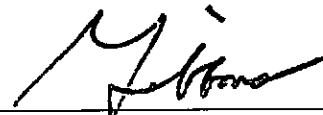
We next address Green's arguments regarding his state torts claims. Below, the district court found that all respondents were entitled to immunity from the state torts claims based on NRS 41.032(1) (providing that the State and its agencies and officers have immunity from suits that are based upon allegations regarding their exercise of due care in the execution of a valid statute). In his civil appeal statement, Green asserts that respondents were not entitled to immunity and that Nevada courts recognize an exception to NRS 41.032(1)'s grant of immunity, citing *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 168 P.3d 1055 (2007). Green fails, however, to articulate any reason why respondents are not entitled to immunity under NRS 41.032(1) or otherwise explain how respondents' actions caused them to fall into an exception from the grant of immunity. Accordingly, because Green fails to provide any cogent argument on this issue, we decline to consider it. *See Edwards v. Emperor's Garden Rest.*,


¹Because we conclude that respondents in this matter cannot be sued under § 1983, we need not address the district court's alternative grounds for granting summary judgment in favor of respondents on those claims. Additionally, although Green briefly asserts that he could have amended his complaint below to avoid the grant of summary judgment, he never moved to amend the complaint to sue the respondents in their individual capacities, and thus, he has waived any such argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (providing that arguments not raised in the district court are deemed waived on appeal).

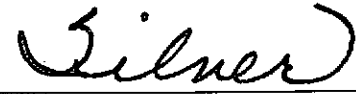
122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not cogently argued). And, therefore, we necessarily affirm the district court's grant of summary judgment in favor of respondents on Green's state torts claims.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²Green also asks this court to allow him to amend his complaint, which we treat as an argument that the district court erred in denying his motion to amend his complaint. Green claims amendment should have been allowed because it would have remedied any issues with his state torts claims. While the district court did not enter a written order on Green's motion, its grant of summary judgment in favor of respondents effectively denied that motion, and this court may review that denial on appeal. *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (holding that the district court's failure to rule on a fees motion constituted a denial that could be reviewed by an appellate court). We decline to address this issue, however, because Green failed to present any cogent argument as to why his motion to amend should have been granted or what additional facts he would have alleged to create a genuine issue of material fact as to any of his claims. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

cc: Hon. Jim C. Shirley, District Judge
Dushon Nichalos Green
Attorney General/Carson City
Pershing County Clerk