

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN DAVID FOLLETT,
Appellant,

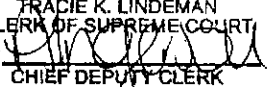
vs.

THE STATE OF NEVADA; WASHOE
COUNTY BOARD OF
COMMISSIONERS MARSHA
BERKBIGLER, VAUGHN HARTUNG,
DAVID HUMKE, KITTY JUNG,
BONNIE WEBER AND SUCCESSORS
THERETO; WASHOE COUNTY
PUBLIC DEFENDER JEREMY T.
BOSLER AND SUCCESSOR THERETO;
APPOINTED COUNSEL
ADMINISTRATOR ROBERT BELL AND
SUCCESSOR THERETO; SECOND
JUDICIAL DISTRICT COURT
ADMINISTRATOR JOEY ORDUNA
HASTINGS AND ANY SUCCESSOR
THERETO; RENO JUSTICE COURT
ADMINISTRATOR; WASHOE COUNTY
DISTRICT ATTORNEY RICHARD A.
GAMMICK AND SUCCESSOR
THERETO; AND ADMINISTRATIVE
OFFICE OF THE COURTS ROBIN
SWEET, STATE COURT
ADMINISTRATOR; SCOTT SOSEBEE,
DIRECTOR OF INFORMATION
TECHNOLOGY; AND JOHN
MCCORMICK, JUDICIAL SERVICES
AND PROGRAMS,
Respondents.

No. 68885

FILED

FEB 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a negligence and civil rights action. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant filed a district court complaint, alleging that respondents, various government officials, failed to properly train and supervise counsel appointed to represent him in his criminal case and subsequent post-conviction proceedings. Appellant also alleged that respondents failed to implement a system to ensure that he was aware of certain procedures and related procedural rights necessary for meaningful access to the courts. In particular, he contended that respondents conspired to prevent pretrial detainees from accessing the Washoe County Law Library.¹ Respondents filed motions to dismiss, which were granted by the district court over appellant's oppositions.² This appeal followed.

In his civil appeal statement, appellant argues that the district court erred by holding him to a heightened pleading standard and considering whether he would ultimately succeed on his claims, rather

¹Insofar as appellant asserted that other detainees were denied access to the Washoe County Law Library, appellant was the only plaintiff named in the district court action. As no other parties were named as plaintiffs, we only consider this claim as it applies to appellant. See NRCP 17(a) ("Every action shall be prosecuted in the name of the real party in interest."); *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (explaining that a real party in interest is the party "who possesses the right to enforce the claim and has a significant interest in the litigation").

²The record demonstrates that respondents Washoe County District Attorney and Second Judicial District Court Administrator were not served with process and did not appear in the district court. As a result, they never became parties to the underlying action, and appellant's argument that the district court should have ordered the Washoe County District Attorney to answer the complaint necessarily fails. See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who is not served with process and does not make an appearance in the district court is not a party to that action).

than whether his case was entitled to proceed to discovery.³ The district court, however, dismissed appellant's claims for negligence and civil rights violations based on the court's conclusion that appellant failed to allege facts establishing the elements of his claims. This was not an application of a heightened pleading standard, but instead, was the general standard for determining whether appellant had stated a claim. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) ("The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested.").

In his first and second claims for relief, appellant broadly alleged that respondents failed to properly train and supervise his appointed attorneys, resulting in deficiencies in his criminal case, including his post-conviction proceedings. Although appellant requested monetary damages, any potential injury arising from appellant's allegations implicated the validity of his conviction and continued incarceration. *See DeBoer v. Senior Bridges of Sparks Family Hosp.*, 128 Nev. ___, ___, 282 P.3d 727, 732 (2012) (explaining that the elements of a negligence claim require a showing "that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the

³Appellant also asserts that the district court erred by failing to recognize that he had stated an equal protection claim. But appellant did not allege that he was part of a protected group targeted by a particular law or that he was otherwise treated differently under the law from any similarly situated individuals, and thus, his complaint did not state an equal protection claim. *See Zamora v. Price*, 125 Nev. 388, 395, 213 P.3d 490, 495 (2009) ("Both the United States and Nevada Constitutions' equal protections clauses are implicated when a law treats similarly situated people differently.").

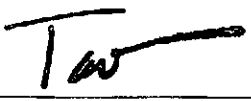
breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages"); *see also* *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (recognizing that a sufficiently stated ineffective-assistance-of-counsel claim may invalidate a judgment of conviction). As such an injury must be addressed through a petition for a writ of habeas corpus, the district court properly concluded that appellant's claims for negligent failure to train and supervise his appointed attorneys failed. *See Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 621 (2014). ("A post-conviction petition for a writ of habeas corpus is the *exclusive remedy* for challenging the validity of a conviction or sentence aside from direct review of a judgment of conviction on appeal and 'remedies which are incident to the proceedings in the trial court.'" (quoting NRS 34.724(2)(a))); *cf. Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding that a state prisoner's claim for damages under 42 U.S.C. § 1983 for an unconstitutional conviction is not cognizable if judgment in favor of the prisoner would necessarily imply the invalidity of his conviction, unless the prisoner can demonstrate that the conviction was already invalidated).

In the remainder of his complaint, appellant alleged that he was denied access to the Washoe County Law Library. The constitutional right of access to the courts requires prison officials to provide inmates "with adequate law libraries or adequate assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (emphasis added). Here, it is undisputed that appellant was provided with appointed counsel to help him with his case. And while appellant takes issue with the adequacy of the attorneys appointed to represent him, that is a separate issue properly addressed in a habeas corpus petition. *See Pellegrini v. State*, 117 Nev. 860, 882-83, 34 P.3d 519, 534-35 (2001) (recognizing that ineffective-assistance-of-counsel claims must generally be brought in post-conviction motions or, in limited circumstances, on direct appeal from a

criminal conviction); *see also Heck*, 512 U.S. at 486-87. Thus, we conclude that the district court also properly dismissed this claim.⁴ And as none of appellant's counts stated a legally cognizable claim, we affirm the dismissal of appellant's complaint.

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

⁴In light of our conclusions herein, we further conclude that the district court did not abuse its discretion by declining to permit appellant to amend his complaint to provide a more definite statement or err by declining to specify that the dismissal was without prejudice. *See Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973) (explaining that a district court's decision to deny leave to amend will not be overturned on appeal absent an abuse of discretion); *see also Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 168-70, 400 P.2d 621, 624-25 (1965) (recognizing that, if a complaint is dismissed for failure to state a claim without leave to amend, such disposition results in a judgment on the merits). Moreover, we need not address appellant's arguments regarding the court's conclusion that respondents were entitled to immunity.

⁵Having considered appellant's December 22, 2015, motion for production of a transcript at government expense, we deny the motion because the transcript that appellant requested is not from a hearing held in the underlying proceedings and is not otherwise properly a part of the record on appeal. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that an appellate court "generally cannot consider matters not contained in the record on appeal").

cc: Hon. Lidia Stiglich, District Judge
Sean David Follett
Attorney General/Carson City
Washoe County District Attorney/Civil Division
Washoe District Court Clerk