

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD A. CASSADY,
Appellant,
vs.
A. MORANO; C/O D. CARE; ROBERT
LEGRAND; AND JAMES G. COX,
Respondents.

No. 71066

FILED

JAN 30 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant, an inmate, filed the underlying complaint asserting that his rights under the United States Constitution were violated when his cell was left disheveled and a small appliance was broken during a routine cell search. Specifically, appellant alleged that respondents violated his Fourth Amendment right to be free from unreasonable search and seizure, Eighth Amendment right to be free from cruel and unusual punishment, and Fourteenth Amendment rights to equal protection and due process. The district court granted summary judgment to respondents on all of appellant's claims and this appeal followed.

On appeal, appellant argues the district court erred by granting summary judgment while issues of material fact remained in dispute. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that a district court's grant of summary judgment is reviewed de novo and that summary judgment is only proper if the pleadings and other evidence demonstrate that no genuine issue of material fact exists and the moving party is entitled to judgment as a

matter of law). But the only disputed facts that appellant specifically identifies are whether his cell was left disheveled and whether the appliance was broken before the search, and neither of these facts was material to the district court's decision to grant summary judgment.¹ See *id.* at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.").

Instead, the court granted summary judgment on appellant's illegal search and seizure claim based on its finding that appellant had no reasonable expectation of privacy in his cell, see *Hudson v. Palmer*, 468 U.S. 517, 530 (1984) (concluding that "prisoners have no legitimate expectation of privacy and that the Fourth Amendment's prohibition on unreasonable searches does not apply in prison cells"), on his cruel and unusual punishment claim based on appellant's failure to allege a deprivation of a basic necessity or any other facts that would support a cruel and unusual punishment claim, see *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (explaining that the Eighth Amendment requires prison officials to "provide humane conditions of confinement; . . . ensure that inmates receive adequate food, clothing, shelter, and medical care, and . . . take reasonable measures to guarantee the safety of the inmates"

¹Appellant also argues the district court relied on perjured testimony and denied him due process by failing to resolve a motion to show cause relating to his perjury allegations before addressing the summary judgment motion. Because appellant has not identified any purportedly fraudulent statements that the district court relied on in deciding the summary judgment motion, he has not demonstrated that any error in failing to address the show cause motion before granting summary judgment affected the court's decision. As a result, we conclude that any such error was harmless and does not provide a basis for reversal of the summary judgment. See NRCP 61 (requiring the court to disregard any error that does not affect a party's substantial rights).

(internal quotation marks omitted)), and on his equal protection claim based on appellant's failure to allege that he was treated differently from any other similarly situated inmate. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (explaining that the Fourteenth Amendment's Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike"). On appeal, appellant has not raised any arguments addressing these conclusions, and thus, he has waived any such arguments.² See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that claims not raised on appeal are deemed waived). As a result, we necessarily affirm the district court's summary judgment as to appellant's search and seizure, cruel and unusual punishment, and equal protection claims.

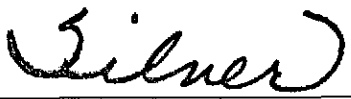
As to appellant's due process claim, the district court found that appellant had an adequate postdeprivation remedy available in the form of a justice court action, see *Hudson*, 468 U.S. at 533 (providing that "an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available"), and that the search of appellant's cell did not impose a significant hardship atypical of ordinary prison life. See *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995) (explaining that prison regulations may create liberty interests under certain circumstances, but noting that "these interests will be generally limited to freedom from restraint which . . . imposes atypical and significant

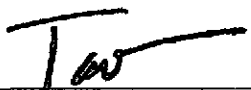
²Indeed, although appellant states throughout his informal brief that respondents violated his constitutional rights, nowhere in his brief does appellant even identify which constitutional rights respondents allegedly violated.

hardship on the inmate in relation to the ordinary incidents of prison life"). Except to assert that justice court was not a proper tribunal to address his constitutional claims, appellant also makes no argument as to these conclusions on appeal, and, as a result, he has waived any such arguments. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Thus, we also affirm the district court's grant of summary judgment on appellant's due process claim.³

As appellant has not demonstrated any grounds on which the district court's summary judgment should be overturned, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

³In light of our affirmance of the summary judgment on each of appellant's claims for the reasons discussed above, we need not reach appellant's arguments that the district court erred in concluding that respondents were entitled to qualified immunity and that appellant failed to allege personal participation by two of the respondents.

⁴We have considered appellant's argument regarding bias and conclude that appellant has not demonstrated that the district court exhibited bias against him in presiding over this action.

cc: Hon. Jim C. Shirley, District Judge
Richard A. Cassady
Attorney General/Carson City
Attorney General/Las Vegas
Pershing County Clerk