

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY JAMES WASHINGTON,  
Appellant,  
vs.  
JILL JACOBY,  
Respondent.

No. 72332

**FILED**

FEB 06 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Larry James Washington appeals from a district court order dismissing his civil rights complaint. Eighth Judicial District Court, Clark County; Kerry Earley, Judge.

Following the entry of his guilty plea in an unrelated criminal matter, Washington filed a civil rights complaint alleging that respondent, defendant below, intentionally omitted portions of a hearing in his criminal case from the transcript of the proceeding, thereby denying him the ability to perfect his post-conviction petition for writ of habeas corpus. Importantly, the record reveals that Washington eventually obtained an amended transcript that included the previously omitted portion and he was subsequently permitted to withdraw his guilty plea. The district court in this matter dismissed the complaint without prejudice for failure to state a claim, pursuant to NRCP 12(b)(5), and this appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complaint. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Dismissing a complaint is appropriate “only if it appears beyond a doubt

18-900180

that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* at 228, 181 P.3d at 672.

In the underlying complaint, Washington alleged a violation of his Ninth and Fourteenth Amendment rights.<sup>1</sup> On appeal, Washington argues that the district court failed to apply the proper standard for dismissal and that his complaint does state a cognizable claim. However, the district court’s order indicates it properly applied NRCP 12(b)(5) in reviewing the matter and concluded that, taking the facts alleged as true, the complaint failed to state a claim that would entitle Washington to relief. *See id.* (stating that a complaint should be dismissed only if, taking the facts as true, plaintiff is not entitled to relief); NRCP 12(b)(5) (allowing dismissal if the complaint fails “to state a claim upon which relief can be granted”). And Washington fails to provide any cogent argument explaining why he believes his complaint states a cognizable claim, as he only asserts on appeal that the district court failed to apply the proper standard. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (concluding that this court need not consider claims that are not cogently argued).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



C.J.

Silver



J.

Tao



J.

Gibbons

---

<sup>1</sup>Washington’s complaint also asserted a Fifth Amendment violation, but he conceded below that the Fifth Amendment does not apply to state actions.

cc: Hon. Kerry Earley, District Judge  
Larry James Washington  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk