

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,

Appellant,

vs.

THE STATE OF NEVADA

DEPARTMENT OF CORRECTIONS;

BRIAN SANDOVAL; ROSS MILLER;

CATHERINE CORTEZ MASTO; JAMES

G. COX; ROMEO ARANAS; JOSEPH

HANSON; DR. PAUL BITAR; AND

DWIGHT NEVEN,

Respondents.

No. 73197

FILED

APR 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Frank Milford Peck appeals from district court orders granting summary judgment and denying an NRCP 60(b) motion to set aside judgment in a civil rights action.¹ Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Peck filed a civil rights complaint against respondents Nevada Department of Corrections (NDOC), Brian Sandoval, Ross Miller, Catherine

¹Because defendant Naph Care does not appear to have been served and did not make an appearance in the district court, it did not become a party to the case, and thus, it is not a proper party to this appeal. *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). We therefore direct the clerk of the court to amend the caption of this case to conform to the caption on this order.

18-900895

Cortez Masto,² James G. Cox, Romeo Aranas, Joseph Hanson, Paul Bitar and Dwight Neven alleging violations of the First, Eighth, and Fourteenth Amendments related to dental care he sought while incarcerated. Respondents NDOC, Cox, Aranas, Hanson, Bitar, and Neven sought summary judgment, which was granted³ over Peck's opposition, on the basis that they were entitled to qualified immunity, among other bases. Peck then filed a motion to set aside, which was denied. This appeal followed.

On appeal Peck fails to challenge or make any argument regarding the district court's grant of summary judgment on the basis of qualified immunity. Thus, he has waived any such argument. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived). Additionally, our review of the record indicates that the district


²Peck presented no arguments as to the interlocutory dismissal of respondents Sandoval, Miller, and Cortez Masto. Thus, any challenge to that decision has been waived and we therefore, affirm the dismissal of these parties. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant's opening brief are waived).


³Although NDOC was named in the complaint, the complaint contained no claims against NDOC. Additionally, the district court made no specific mention of NDOC in its order granting summary judgment, although the order makes clear that it resolves the case in its entirety as to all remaining parties. Regardless, NDOC is not a proper person for purposes of § 1983 and therefore, summary judgment as to NDOC was proper. *See 42 U.S.C. § 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). Thus, we affirm the grant of summary judgment as to NDOC.

court did not abuse its discretion in denying Peck's NRCP 60(b) motion to set aside the judgment. *See Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (stating that the district court has broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion). Accordingly, we affirm the grant of summary judgment and the denial of NRCP 60(b) relief.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Nancy L. Alf, District Judge
Frank Milford Peck
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk