

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW JAMES KING,
Appellant,
vs.
DIRECTOR JAMES DZURENDA;
WARDEN RENEE BAKER; A.W.O.
BYRNES; AND A.W.P. GITTERE,
Respondents.

No. 73975

FILED

JUL 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew James King appeals from a district court order granting summary judgment in a civil rights action. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

King filed a civil rights complaint against CCSIII Sandoval, CCSII Oxborrow, and respondents James Dzurenda, Renee Baker, William Gittere, and Harold Byrnes.¹ Respondents filed a motion to dismiss or in the alternative for summary judgment, arguing, in relevant part, that King failed to exhaust his administrative remedies as required under the Prison Litigation Reform Act of 1995 (PLRA). The district court granted summary judgment over King's opposition and, as a result, it dismissed the complaint without prejudice. This appeal followed.

¹CCSIII Sandoval and CCSII Oxborrow were not served and did not make an appearance in the district court. As such, they never became parties to the case, and thus, they are not proper parties 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.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.


“[W]hen an inmate files a § 1983 civil rights complaint in a Nevada district court challenging conditions of confinement without first having exhausted all available administrative remedies, the district court is required to dismiss the complaint.” *Berry v. Feil*, 131 Nev. 339, 347, 357 P.3d 344, 349 (Ct. App. 2015). On appeal, King argues that respondents interfered with his attempts to exhaust his administrative remedies by throwing grievances away, changing tracking numbers to confuse him, and hiding grievances within other tracking numbers. King asserts that this alleged interference negates the requirement for him to exhaust his administrative remedies. Essentially, King is alleging the grievance process was not available to him.


It is true that an inmate must only exhaust available remedies; however, once the respondents showed there was an available remedy, here, the grievance process, it was King's burden “to come forward with evidence showing that there is something in his particular case that made the existing and generally available administrative remedies effectively unavailable to him.” *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014). And, while King generally alleges respondents interfered with his ability to

complete the grievance process, he provided no evidence to support these allegations and he does not point to any such evidence in the record on appeal. These allegations, without more, are insufficient to create a genuine issue of fact, precluding summary judgment. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31. Therefore, as the record shows King failed to properly exhaust the available administrative remedies, summary judgment was proper. *See id.* at 729, 121 P.3d at 1029; *Berry*, 131 Nev. at 347, 357 P.3d at 349. We therefore,

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Gary Fairman, District Judge
Matthew James King
Attorney General/Carson City
White Pine County Clerk

²King filed a supplement to his informal brief to which he attached various exhibits that were not presented to the district court and made arguments regarding such exhibits. This court did not consider any such exhibits or argument as we cannot consider matters that do not properly appear in the record on appeal. *See Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981).