

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GENE ANTHONY ALLEN,
Appellant,
vs.
N.D.O.C. MEDICAL DIRECTOR
ROMEO ARANAS; JOHN PERRY; AND
THE STATE OF NEVADA,
Respondents.¹

No. 76302-COA

FILED

FEB 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gene Anthony Allen appeals from a district court order dismissing his complaint in a civil rights action. First Judicial District Court, Carson City; James Todd Russell, Judge.

Allen, an inmate, sued respondents the Nevada Department of Corrections (NDOC) Medical Director Romeo Aranas; John Perry, an NDOC employee; and the State of Nevada, and seemingly asserted both federal and state law claims alleging, among other things, violation of his Eighth Amendment right to freedom from cruel and unusual punishment and retaliation. Respondents moved to dismiss Allen's complaint, arguing that the district court lacked subject matter and personal jurisdiction because Allen failed to comply with NRS 41.031(2) by naming the State of Nevada on relation of NDOC in his complaint and by serving that document along with a summons on the Nevada Attorney General. The district court found that Allen failed to oppose respondents' motion to dismiss, but the court nevertheless considered their motion on the merits, and based on the

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

jurisdictional arguments set forth therein, the court dismissed Allen's complaint. This appeal followed.

On appeal, Allen primarily argues the merits of his underlying claims. But insofar as the district court construed those claims as arising under the Nevada constitution and dismissed them for lack of jurisdiction based on Allen's failure to properly invoke Nevada's waiver of sovereign immunity, the district court correctly dismissed any such claims on this basis. *See* NRS 41.031(2) (providing that, when a plaintiff asserts a claim against a state agency, the plaintiff's complaint must name the State of Nevada on relation of the particular agency at issue and be served on the Nevada Attorney General). Moreover, on appeal Allen does not present any arguments challenging that decision. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Thus, we necessarily affirm the dismissal of any state-law-based claims set forth in Allen's complaint.


Allen's complaint can also be construed as presenting claims for violations of the United States Constitution pursuant to 42 U.S.C. § 1983. But when a plaintiff asserts claims under § 1983, the plaintiff cannot pursue those claims against a state or any of its officials or employees acting in their official capacities. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) (holding that states and state officials acting in their official capacities cannot be sued in state courts under § 1983 because they are not persons for purposes of that statute); *N. Nev. Ass'n of Injured Workers v. Nev. State Indus. Ins. Sys.*, 107 Nev. 108, 114-15, 807 P.2d 728, 732 (1991) (concluding that, under *Will*, appellants could not assert federal civil rights claims against a state agency or its employees). And because Allen's

complaint only named Aranas and Perry in their official capacities and the State of Nevada, the district court was required to dismiss any § 1983 claims asserted therein. Accordingly we affirm the dismissal of Allen's § 1983 claims, albeit for reasons other than those relied on by the district court. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that the appellate courts may affirm a district court's decision where it reached the correct result, albeit for the wrong reason).

Thus, based on the reasoning set forth above, we affirm the district court's order dismissing Allen's complaint in its entirety.²

It is so ORDERED.³


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

²We recognize that the district court erroneously found in its order that Allen failed to oppose respondents' motion to dismiss. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (providing that the district court's factual findings are entitled to deference unless they are clearly erroneous or unsupported by substantial evidence). But in light of our resolution of this matter, we conclude that the district court's error in this regard was harmless. *Cf.* NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights).

³We have considered Allen's remaining arguments and conclude that they either do not provide a basis for relief or need not be addressed given our disposition of this appeal.

cc: Hon. James Todd Russell, District Judge
Gene Anthony Allen
Attorney General/Las Vegas
Carson City Clerk