

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK FRAHM,  
Appellant,

vs.

C. BECKERDITE (CASEWORKER); C/O  
CLARK (LIEUTENANT); RENEE  
BAKER, WARDEN; K. THOMAS -  
NDOC OMD; AND LISA  
SCHWARZENBERG,  
Respondents.

No. 76233-COA

**FILED**

**MAY 24 2019**

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

*ORDER AFFIRMING IN PART,  
REVERSING IN PART AND REMANDING*

Mark Frahm appeals from a district court order dismissing a civil rights and torts complaint. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.


Frahm, an inmate, filed a civil rights and torts complaint pursuant to 42 U.S.C. § 1983 against respondents, although he also cited various Nevada statutes as bases for jurisdiction. Respondents moved to dismiss for lack of subject matter jurisdiction and personal jurisdiction, arguing that under NRS 41.031 and NRS 41.0337, Lowry failed to properly invoke the State's waiver of sovereign immunity and failed to properly effect service. The district court granted the motion to dismiss, over Frahm's

opposition, finding that it lacked subject matter jurisdiction. This appeal followed.

Determinations of subject matter jurisdiction are subject to de novo review. *See Craig v. Donnelly*, 135 Nev., Adv. Op. 6, \_\_\_, 439 P.3d 413, 415 (Ct. App. 2019). Here, a review of the complaint reveals that Frahm named all respondents in their individual capacities and respondent Renee Baker in her official capacity as well. He brought 42 U.S.C. § 1983 claims asserting violations of the Fourteenth Amendment, although he also made vague assertions about tort and state constitutional claims and listed various Nevada statutes as bases for jurisdiction. As such, while it is clear he brought 42 U.S.C. § 1983 claims, his complaint could also be construed as bringing state law claims. To the extent the complaint could be construed as raising state claims and to the extent claims were brought against respondent Baker in her official capacity, dismissal of those claims was proper. *See Craig*, 135 Nev., Adv. Op. 6, 439 P.3d at 415-16. As to the 42 U.S.C. § 1983 claims brought against the respondents in their individual capacities, Frahm did not need to comply with the requirements of NRS 41.031 and NRS 41.0337 and dismissal of those claims based upon failure to comply with those provisions was improper. *See Craig*, 135 Nev., Adv. Op. 6, 439 P.3d at 415-16. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Egan K. Walker, District Judge  
Mark Frahm  
Attorney General/Las Vegas  
Washoe District Court Clerk

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<sup>1</sup>Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of this case, and thus, no such brief has been ordered.