

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERARDO PEREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA  
DEPARTMENT OF CORRECTIONS;  
DWIGHT NEVEN; DUSTIN  
MUMPOWER; AND JEREMY BEAN,  
Respondents.

No. 72642

FILED

MAY 09 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Gerardo Perez appeals from a district court order dismissing his civil rights complaint.<sup>1</sup> Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Perez, an inmate, alleges in his complaint that he was given a security threat group designation in 2005, but did not become aware of the designation until 2015. At that time, he filed an informal grievance challenging the designation, which was denied by respondent Jeremy Bean. Perez then filed a first level grievance, which was denied by respondent Dwight Neven. Next, Perez filed a second level grievance and non-party S.L. Foster responded by agreeing with the reasoning and outcome of the lower level grievances, but nonetheless ordering that Perez be scheduled for

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<sup>1</sup>Not all defendants named below made appearances in the district court. Such defendants 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.

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a full classification committee to review the designation. The designation was ultimately upheld and Perez alleges respondent Dustin Mumpower informed him of the decision.

Respondents moved to dismiss the complaint for failure to state a claim, which was granted over Perez's opposition. The district court determined that Perez's complaint alleged he received a review of his security threat group status by the full classification committee, that the only alleged involvement by Bean, Neven, and Foster was responding to his grievances, and that Mumpower's only alleged involvement was informing Perez of the classification committee's decision. The court determined that responding to a grievance does not give rise to liability under 42 U.S.C. § 1983 and that respondent, the Nevada Department of Corrections (NDOC), was not a proper party for purposes of a § 1983 claim. In his opposition to the motion to dismiss, Perez had requested leave to amend his complaint pursuant to NRCP 15, and this request was effectively denied by the order dismissing the case. This appeal followed.

On appeal, Perez first asserts that the claims against NDOC should not have been dismissed. This argument lacks merit, however, as the district court correctly determined that NDOC was not a proper party for § 1983 purposes. *See 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).

With regard to the dismissal of his claims against the remaining respondents, Perez presents no arguments regarding the propriety of that decision, and thus any challenge to their dismissal has been waived. *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). Nonetheless, we note that the dismissal as to these parties was proper, as Perez's claims failed to properly allege a § 1983 action since they were based only on these parties' denial of his grievances or informing him of the classification committee's decision, and thus failed to assert a personal participation in the deprivation of his rights. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (stating that "to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation"); *see also Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (stating "[t]here is no legitimate claim of entitlement to a grievance procedure"); *Lomholt v. Holder*, 287 F.3d 683, 684 (8th Cir. 2002) (holding that the denial of a prisoner's grievance does not state a substantive constitutional claim); *Larson v. Meek*, 240 F. App'x 777, 780 (10th Cir. 2007) (concluding that the denial of grievances alone is insufficient to establish personal participation).


Accordingly, for the reasons set forth above, the district court did not err in dismissing Perez's underlying claims. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that an order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo).


Turning to Perez's challenge to the denial of his motion to amend his complaint, he argues the district court improperly refused to allow him to add non-§ 1983 causes of action against NDOC for NDOC's alleged failure to protect his rights. But Perez's motion merely made vague assertions that he could amend to state non-§ 1983 causes of action without providing any indication of what those causes of action would be or the bases for the same other than referencing an entire chapter of the NRS and the entire Nevada constitution. Additionally, Perez asserts the district court

improperly denied his request that he be allowed leave to amend after an opportunity to conduct discovery. But Perez offers no explanation as to why he should be allowed to maintain a complaint against improper parties while he hunts for information that may allow him to amend the complaint to add proper parties. Accordingly, for the reasons set forth above, we conclude the district court did not abuse its discretion in denying the motion to amend. *See Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000) (denial of a motion to amend is reviewed for an abuse of discretion).

Accordingly, we affirm the district court's dismissal order and the denial of Perez's request to amend the complaint.

It is so ORDERED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Hon. Mark R. Denton, District Judge  
Gerardo Perez  
Attorney General/Carson City  
Attorney General/Las Vegas  
Eighth District Court Clerk

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<sup>2</sup>We have considered Perez's remaining arguments on appeal and conclude they do not provide a basis for relief.