

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN EDWARD WATKINS,
Appellant,
vs.
PENNE BURGESS,
Respondent.

No. 71661

FILED

JUN 13 2017

ORDER OF AFFIRMANCE

CLERK
BY *M. Wilson*
DEPUTY CLERK

Jonathan Edward Watkins appeals from a district court order dismissing his civil rights complaint. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant, an inmate, filed a complaint in the district court asserting that respondent, his prison work supervisor, violated his right to equal protection pursuant to the Fourteenth Amendment to the United States Constitution. Appellant's claim stems from his allegation that respondent verbally abused him, that this verbal abuse was based on appellant's race, and that the verbal abuse led to appellant quitting his prison job. Respondent moved to dismiss the complaint, which the district court granted, and this appeal followed. This court reviews a district court order granting a motion to dismiss under NRCP 12(b)(5) de novo. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Dismissal will be affirmed when the complaint's factual allegations, even when recognized as true, do not entitle the plaintiff to relief under the claims being asserted. *See id.*


The district court provided three bases upon which it granted the motion to dismiss: (1) because appellant failed to timely file an opposition to the motion to dismiss,¹ *see* FJDCR 15(5) (providing that an opposing party's failure to timely file points and authorities in opposition to a motion constitutes a consent to the granting of the motion); (2) because he failed to properly state a claim of violation of his equal protection rights as he neither alleged membership in a protected class nor conduct suggesting discrimination based on membership in a protected class, *see Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (recognizing that membership in a protected class is an element to an equal protection claim); *Ransdell v. Clark Cty.*, 124 Nev. 847, 859-60, 192 P.3d 756, 765 (2008) (same); and (3) because qualified immunity protected respondent as appellant failed to allege a violation of clearly established constitutional rights. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (providing that qualified immunity protects a defendant from liability if there was no violation of a clearly established constitutional right); *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 359-60, 212 P.3d 1068, 1076 (2009) (same).


On appeal, appellant only argues that his equal protection rights were violated, and thus his complaint should not have been dismissed. Having reviewed the complaint, however, it is clear the district court did not err in its conclusion that appellant failed to allege membership in a protected class or discrimination based on such

¹To that end, appellant requested an extension of time to respond to the motion, and while the district court did not resolve that motion, appellant failed to file his opposition until after the requested extension of time period had passed.

membership, thus his complaint failed to state a claim upon which relief could be granted. *See Barren*, 152 F.3d at 1194; *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. Further, because appellant does not challenge the district court's conclusions that he failed to timely oppose the motion to dismiss or that respondent was entitled to qualified immunity, he has waived any such arguments, which provide additional bases to affirm the district court's dismissal order. *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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²To the extent appellant argues that the district court erred in not granting a default judgment against the State of Nevada, we disagree, as the district court had already dismissed appellant's complaint in its entirety before appellant applied for a default. Further, appellant failed to properly name the state as a party. *See* NRS 41.031(2) ("In any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit.").

cc: Hon. James Todd Russell, District Judge
Jonathan Edward Watkins
Attorney General/Las Vegas
Carson City Clerk