

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND GEAN PADILLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80491-COA

FILED

AUG 12 2020

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

ORDER OF AFFIRMANCE

Raymond Gean Padilla appeals from a district court order of dismissal in a civil rights action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

In the proceedings below, as relevant here, Padilla filed a civil rights complaint against respondent the State of Nevada, alleging various constitutional violations pursuant to 42 U.S.C. § 1983 and purportedly NRS 41.0322. The complaint made the same factual allegations, asserted the same claims, and named the same defendant as another complaint Padilla previously filed. The first complaint was dismissed with prejudice, which Padilla appealed, and this court affirmed that decision in Docket No. 80099-COA. Based on that dismissal, respondent moved to dismiss the instant complaint with prejudice, asserting that it failed to state a claim against respondent, that it was untimely served, that it challenged Padilla's conviction such that his sole remedy was a petition for a writ of habeas corpus, and that Padilla's claims were subject to claim preclusion. After a hearing on the matter, the district court granted the motion to dismiss. In its written order, the district court concluded that Padilla's complaint was barred by claim preclusion based on the dismissal of the first complaint and

that he failed to state a claim against respondent because his allegations involved Clark County employees. This appeal followed.

On appeal, Padilla challenges the district court's order of dismissal. This court reviews an order granting a motion to dismiss for failure to state a claim under NRCP 12(b)(5) de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). This court will affirm the decision to dismiss a complaint under NRCP 12(b)(5) when the complaint's factual allegations do not entitle a plaintiff to relief under the claims asserted. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Here, Padilla asserts that the district court erred in dismissing his complaint based on a variety of alleged arguments by respondent, some of which were not argued by respondent and none of which were relied on by the district court in dismissing the complaint. For example, Padilla asserts that the district court erred in dismissing his complaint based on respondent's argument that Padilla does not have a right to file a civil rights complaint based on prosecutorial misconduct, that he failed to serve notice on respondent, and that he does not have a constitutional right to file a civil action against the attorneys for violating his civil rights during a criminal action against him.

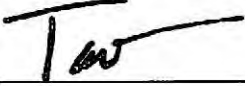
But the district court dismissed this complaint on the basis that it was barred by the doctrine of claim preclusion, pursuant to *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (2008). And on appeal, Padilla has provided no argument addressing those grounds. Thus, because Padilla fails to raise any arguments addressing the grounds relied on by the district court in dismissing the complaint, he has waived any such

challenge, and we necessarily affirm the district court's order. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
Raymond Gean Padilla
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

¹Insofar as Padilla raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.