

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN FRANCIS ARPINO,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY,
DIVISION OF PAROLE AND
PROBATION AND/OR NEW CHIEF OF
DPS; MS. PONGASI; GEORGE
TOGLIATTI; AND ANNE K.
CARPENTER,
Respondents.

No. 80173-COA

FILED

SEP 18 2020

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

ORDER OF AFFIRMANCE

John Francis Arpino appeals from an order of dismissal in an inmate litigation matter. First Judicial District Court, Carson City; James Todd Russell, Judge.

Arpino filed a complaint against respondents the State of Nevada Department of Public Safety, Division of Parole and Probation and/or New Chief of DPS ("the Division"), Jennifer Pongasi, George Togliatti, and Anne K. Carpenter, alleging that, despite being granted parole he was not timely released after being informed he was not permitted to be paroled to the address he requested. He asserted that the failure to release him was contrary to NRS 213.140 and NAC 213.545 and that it subjected him to due process and equal protection violations under the Fourteenth Amendment to the United States Constitution and cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. Ultimately, all respondents moved to dismiss and the motions were granted over Arpino's oppositions. As relevant here, the court found that Arpino could not assert a state tort cause of action, concluding

that the Legislature specifically stated that the creation of parole standards did not establish a basis for any cause of action. It further found that Arpino's complaint alleged that respondents violated his rights under the United States Constitution and that he failed to identify a state law cause of action for violation of these federal rights. The district court then went on to analyze the claims under 42 U.S.C. § 1983 and found that Pongasi, Togliatti and Carpenter were entitled to qualified immunity. Additionally, the district court determined that neither the Division, nor the other respondents in their official capacities, were persons subject to liability under Section 1983. This appeal followed.

On appeal, while Arpino summarily asserts that he filed a state tort complaint, he fails to provide any developed argument to support this assertion or otherwise challenge the district court's findings that he could not and did not assert such a claim. Thus, Arpino has failed to provide cogent argument on this point and we need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument). As a result, we turn to the district court's analysis of his claims under Section 1983. In this regard, on appeal, Arpino failed to challenge the district court's determination that Pongasi, Togliatti and Carpenter were entitled to qualified immunity and he has therefore waived any such argument. *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). He likewise failed to dispute the district court's findings that the Division and the remaining respondents in their official capacities were not persons subject to liability under Section 1983 and thus

any arguments on this point have likewise been waived. *See id.* Based on the foregoing, we necessarily

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
John Francis Arpino
Attorney General/Carson City
Attorney General/Dep't of Public Safety/Carson City
Carson City Clerk

¹To the extent that Arpino raises other arguments that are not specifically addressed herein, we have considered them and conclude they either do not need to be reached given the disposition of this appeal or they do not present a basis for relief.