IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHANIEL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS; JAMES DZURENDA; HAROLD WICKHAM; JERRY HOWELL; RONALD OLIVER; FRANK DREESEN; AND PHILIP GANG,
Respondents.

No. 80792-COA

FILED

FEB 12 2021

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

ORDER AFFIRMING AS MODIFIED

Nathaniel Williams appeals from a district court order dismissing an amended complaint in a tort and civil rights action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Williams sued respondents, which are the State of Nevada, the Nevada Department of Corrections (NDOC), and various NDOC employees and officials, alleging that his two-year-old son was strip searched on several occasions as a condition to visiting him at the Southern Desert Correctional Center (SDCC) pursuant to that facility's operating procedures. Based on these allegations, it appears that Williams, individually and on behalf of his minor child, intended to assert claims against respondents for intentional infliction of emotional distress (IIED), battery, and violation of the Fourth Amendment. Williams then moved for the appointment of counsel, which the district court denied based on her lack of authority to grant his motion, there being no right to counsel in a civil case.

Respondents then moved to dismiss Williams's original complaint with prejudice, arguing that, even though he did not identify his son as a party in the complaint, he clearly brought claims on behalf of his son, and because he could not represent his son, his son could not proceed to pursue his claims unless he was represented by counsel. The district court entered an order in which it denied Williams's motion for appointment of counsel. The district court summarily dismissed Williams's complaint in its entirety, indicating that the dismissal was with prejudice as to Williams's son, but without prejudice as to Williams, who was granted leave to file an amended complaint in his individual capacity.

Williams filed an amended complaint that reiterated his prior allegations and asserted claims for IIED and violation of the Fourth and Eighth Amendments, which were based on the searches themselves and his knowledge that they were taking place and that they were a prerequisite to his son visiting him. Respondents, in turn, moved to dismiss Williams's amended complaint under NRCP 12(b)(5). In particular, respondents argued, among other things, that Williams could not prevail on his IIED claim because he did not witness the searches and that his Fourth and Eighth Amendment claims failed because he lacked standing to assert his son's rights. The district court agreed with respondents on both points and dismissed Williams's amended complaint with prejudice. This appeal followed.

This court reviews a district court order granting an NRCP 12(b)(5) motion to dismiss de novo. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

On appeal, Williams first argues that, in his individual capacity, he has standing to bring the federal constitutional claims contained in his amended complaint based on respondents' violations of his son's Fourth and Eighth Amendment rights. However, Williams's argument fails, as "constitutional rights are personal and may not be asserted vicariously." *See Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (explaining that for a plaintiff to have standing, "the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical" (internal citations and quotation marks omitted)); *see also In re AMERCO Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (recognizing that "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief," even though it does not share the federal Article III standing requirement (internal quotation marks omitted)). Although Williams also argues that he has standing to seek injunctive relief to prevent SDCC from conducting unconstitutional strip searches in the future, his argument fails because he has not demonstrated how he will be harmed if SDCC is not enjoined since, as alleged in his amended complaint, he is no longer housed at SDCC, which presumably means that his visitors, including his son, will not be subjected to future searches at that facility. *See Lujan*, 504 U.S. at 561-63 (explaining that a party challenging the legality of government action, who is not the object of the action, must demonstrate that he or she is among the injured

to establish the injury in fact required for standing); *see also AMERCO Derivative Litig.*, 127 Nev. at 213, 252 P.3d at 694.[1]

Williams next argues that his State law IIED claim set forth in his amended complaint should not have been dismissed. However, on appeal Williams fails to address the district court's conclusion that his IIED claim failed because he did not witness his son being searched, and as a result, he waived any challenge thereto. *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, for the reasons articulated above, we affirm the district court's dismissal of Williams's amended complaint.

Finally, Williams also challenges the dismissal of his original complaint, which it is undisputed that he brought in a representative capacity on behalf of his son. In particular, Williams argues that the district court improperly dismissed his son's claims in his original complaint on grounds that he could not represent his son's interests while proceeding pro se.[2] Respondents counter that the district court was required to dismiss

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[1]For the same reason, Williams has not presented a basis for relief to the extent that he asserts that his complaint included a claim for injunctive relief based on the SDCC's alleged violation of NDOC's administrative regulations concerning strip searches of prison visitors. *See Lujan*, 504 U.S. at 561-63; *see also AMERCO Derivative Litigation*, 127 Nev. at 213, 252 P.3d at 694.

[2]Williams also asserts that the district court improperly denied his motion for appointed counsel on the basis that it lacked authority to grant the request. But the record reflects that the court later clarified that the motion for appointed counsel was denied because there is no right to appointed counsel in civil appeals. And we discern no abuse of discretion in

Williams's original complaint and his son's claims contained therein because he was purporting to represent his son on those claims in a pro se capacity.

As a preliminary matter, the Nevada Supreme Court has generally recognized that, although an individual can proceed pro se before the district courts, a non-attorney cannot do so on behalf of another person or legal entity. *See Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000) ("[N]o rule or statute permits a non-attorney to represent any other person, a company, a trust, or any other entity in the district courts . . . ."). And while Nevada's appellate courts have not specifically addressed whether an exception exists for parents who seek to represent the interests of their children, several other courts have recognized that such an exception would not serve the interests of children. *See Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990) ("It goes without saying that it is not in the interests of minors . . . that they be represented by non-attorneys."); *see also Johns v. Cty. of San Diego*, 114 F.3d 874, 876-77 (9th Cir. 1997) (agreeing with *Cheung*'s reasoning). Thus, given that Williams could not represent his son in his pro se capacity as he purported to do here, the district court properly dismissed his original complaint. As indicated above, however, the district court did permit

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the court's decision in this regard. *See Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804, 808-11, 102 P.3d 41, 46, 48-50 (2004) (concluding that there is no right to appointed legal counsel in a civil case in Nevada absent a statute requiring such appointment, and neither due process nor the Sixth Amendment guarantee the right to counsel in civil proceedings).

Williams to amend his complaint to set forth his individual claims for which he was seeking recovery.

Although the dismissal of Williams's son's claims were required, the district court nonetheless erred when it dismissed these claims *with prejudice* based on Williams's pro se status.[3] *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Indeed, when trial courts render decisions that constitute adjudications on the merits on claims brought on behalf of children by parents proceeding pro se, appellate courts routinely overturn those decisions. *See, e.g., Johns*, 114 F.3d at 876-878 (vacating a trial court order dismissing claims brought by a pro se parent on behalf of a child with prejudice and directing the court to dismiss the claims without prejudice); *Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876, 880, 883 (3d Cir. 1991) (vacating a judgment on a jury verdict entered against parents who brought claims on behalf of their child in their pro se capacity and directing the trial court to dismiss the claims without prejudice absent an appearance by counsel to present those claims); *Cheung*, 906 F.2d at 62 (taking a similar action where a parent brought a case on behalf of a child in his pro se capacity, albeit without naming the child in his complaint).

Thus, the district court should have dismissed Williams's original complaint—which brought claims on behalf of his son—without

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[3]Although Williams confusingly did not name his son as a party in his original complaint, a review of the record demonstrates that the claims contained therein were brought on his son's behalf and the district court treated them as such. Further, as noted above, respondents do not dispute that the claims were brought on behalf of the minor child.

prejudice.[4] *See, e.g.*, *Johns* 114 F.3d at 876-877; *Osei-Afriyie*, 937 F.2d at 882-83; *Cheung* 906 F.2d at 60-62. Accordingly, while the dismissal of the original complaint was warranted, and we affirm that decision, in so doing, we modify the order dismissing Williams's original complaint so that this complaint is dismissed without prejudice, rather than with prejudice. *See Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 122, 345 P.3d 1049, 1055 (2015) (modifying a district court order awarding costs for deposition transcripts and affirming it as modified).

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Joanna Kishner, District Judge
Nathaniel Williams
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

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[4]Under NRS 11.250, a child's status as a minor is considered a disability that tolls statutes of limitations until the child reaches the age of eighteen. *See Canatella v. Van De Kamp*, 486 F.3d 1128, 1132 (9th Cir. 2007) (explaining that, for purposes of claims brought under 42 U.S.C. § 1983, the forum state's tolling provisions generally apply).