IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant,
vs.
THE STATE OF NEVADA; AND
STEVEN GRIERSON,
Respondents.

No. 82710-COA

FILED

DEC 29 2021

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

ORDER AFFIRMING PART, REVERSING IN PART AND REMANDING

Bryan Phillip Bonham appeals from a district court order dismissing his complaint in an inmate litigation matter. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Bonham, who is an inmate, sued the State of Nevada and Steven Grierson, who is the Court Executive Officer of the Eighth Judicial District Court. In his amended complaint, Bonham alleged that he filed a motion to correct an illegal sentence in his criminal case, which was denied; that he submitted a request to Grierson for a copy of the order denying the motion; and that he received a response from a deputy clerk indicating that, absent a court order, there was a fee of $0.50 per page for copies, which meant that he would need to pay $1.00 for a copy of the order. From there, Bonham disputed whether the copy fee was statutorily authorized and asserted that respondents were liable for violating his federal constitutional rights under 42 U.S.C. § 1983 on grounds that he was prevented from appealing the order because he was unable to obtain a free copy to provide an appellate court for its review.

Respondents then moved to dismiss Bonham's amended complaint pursuant to NRCP 12(b)(5), arguing that the copy fee was statutorily authorized and that Bonham did not state a viable § 1983 claim. In particular, respondents argued that a copy fee was mandated pursuant to NRS 19.013(1) absent a contrary direction by the district court. Moreover, with respect to Bonham's § 1983 claim, respondents initially argued that the State of Nevada was not a proper party for purposes of § 1983. Respondents also treated the claim as being based on an alleged violation of Bonham's right of access to the courts, and argued that Grierson did not violate Bonham's constitutional rights because the denial of free photocopies did not constitute a denial of access to the courts. The district court agreed with each of these points and granted respondents' motion to dismiss. This appeal followed.

We review district court orders granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the plaintiff's complaint as true and drawing all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Dismissal is only appropriate "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. In evaluating an NRCP 12(b)(5) motion, this court must determine whether "the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (internal quotation marks omitted).

On appeal, Bonham initially challenges the dismissal of his state-law based challenge to the copy fee by essentially arguing that

Grierson had a duty to provide him a free copy of the order denying his motion to correct an illegal sentence. In concluding that the copy fee was required, the district court relied on NRS 19.013(1), which sets forth a schedule of fees that the district court clerk "shall charge and collect," including a fee of $0.50 per page "[f]or preparing any copy of any record, proceeding or paper . . . unless such fee is waived by the . . . clerk of the court." However, the statute appears in Title 2 of the NRS, which governs civil proceedings, and subsection 6 of the statute expressly states that "[n]o fee may be charged for any services rendered to a defendant or the defendant's attorney in any criminal case or in habeas corpus proceedings." NRS 19.013(6). Thus, when Bonham submitted a request to Grierson in connection with his criminal case seeking a copy of an order entered in the case, he could not properly be charged a copy fee. *See id.*; *Benson v. Eighth Judicial Dist. Court*, Docket No. 74498, 2018 WL 1447728, at *1 (Nev. March 15, 2018) (Order Granting Petition) (stating that a criminal defendant could not be required to pay a copy fee for a copy of his presentence investigation report, and citing NRS 19.013(6), as previously numbered, for support); *see also* NRAP 36(c)(3) (providing that post-2015 unpublished Nevada Supreme Court orders are citable for their persuasive value).

Given the foregoing, insofar as Bonham alleged in his amended complaint that Grierson lacked any statutory authority to charge him a copy fee to obtain a copy of the order denying his motion to correct an illegal sentence, his allegations were sufficient to state a viable claim for a mandatory injunction requiring Grierson to provide him a free copy of the

order.[1] *See City of Reno v. Matley*, 79 Nev. 49, 60-61, 378 P.2d 256, 262 (1963) (rejecting an argument that an injunction was improper due to its mandatory features, observing that "it is settled beyond question that equity has jurisdiction in a proper case to compel affirmative performance of an act as well as to restrain it," and that the court's power in this respect includes "compelling the undoing of acts that ha[ve] been illegally done"); *Dodge Bros., Inc. v. Gen. Petroleum Corp. of Nev.*, 54 Nev. 245, 249, 10 P.2d 341, 342 (1932) (Ducker, J., concurring) (explaining that a mandatory injunction requires the defendant "to do a particular act which is not merely incidental to the main purpose of the order"); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878 (Ct. App. 2020) (recognizing that a complaint satisfies Nevada's notice pleading standard if it sets forth facts that support a claim even if the plaintiff does not "use the precise legalese in describing his grievance"). Because the district court dismissed Bonham's complaint without considering that claim, it erred. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we reverse the order dismissing Bonham's amended complaint insofar as the district court failed to consider Bonham's claim for injunctive relief, and remand for further proceedings consistent with this order.

This does not end our analysis, however, because Bonham also brought a 42 U.S.C. § 1983 claim in his amended complaint, meaning that we must consider whether he suffered a civil rights violation as a result of his inability to obtain a free copy of the order denying his motion to correct

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[1]To the extent that Bonham sought damages and certain other relief in connection with his state-law based challenge to the copy charge, such remedies are not available under NRS 19.013.

an illegal sentence from Grierson. In this respect, we initially conclude that Bonham waived any challenge to the district court's dismissal of his § 1983 claim insofar as it was against the State of Nevada because he does not challenge the court's determination that the State of Nevada was not a proper party for purposes of § 1983. *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). Instead, Bonham argues that he was prevented from appealing the order denying his motion to correct an illegal sentence because he was unable to obtain a copy of it due to the copy fee, which appears to be directed at the district court's determination that his § 1983 claim against Grierson failed because his access-to-the-courts theory was not viable.

But as the district court observed, courts routinely recognize that the mere denial of free photocopies, standing alone, does not establish a violation of an indigent inmate's right to access to the courts. *See, e.g., Johnson v. Moore*, 948 F.2d 517, 521 (9th Cir. 1991) (explaining the same). To the contrary, an inmate who has been denied free photocopies must demonstrate that he or she suffered an actual injury from the denial, meaning frustration of an attempt to prosecute a nonfrivolous legal claim relating to the inmate's conviction or conditions of confinement. *See Lewis v. Casey*, 518 U.S. 343, 351-56 (1996) (setting forth these requirements).

In the present case, Bonham alleged in his amended complaint that he was unable to appeal the order denying his motion to correct an illegal sentence because he could not obtain a copy of it due to the copy fee. But Bonham's amended complaint did not describe the appeal that he would have brought if he had obtained a copy, and as a result, even if his

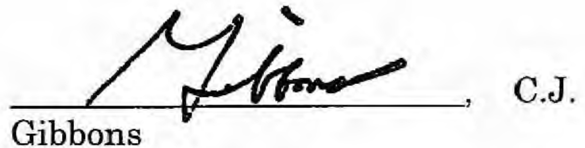
allegations are taken as true, they do not show that he was prevented from prosecuting a nonfrivolous appeal. *See id.*; *Christopher v. Harbury*, 536 U.S. 403, 416 (2002) ("Like any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant."); *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Consequently, the allegations in Bonham's complaint were insufficient to establish the actual injury element of a § 1983 claim based on an access-to-the-courts theory. *See Lewis*, 518 U.S. at 351-56; *see also Breliant*, 109 Nev. at 846, 858 P.2d at 1260. As a result and because Bonham does not argue or explain how the allegations in his complaint supported a § 1983 claim based on any other constitutional violation,[2] we conclude that he failed to demonstrate that the district court erred by dismissing his § 1983 claim against Grierson. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Thus, given the foregoing, we affirm the district court's orders dismissing Bonham's § 1983 claim against the State of Nevada and Grierson, but we reverse the decision to the extent the district court failed

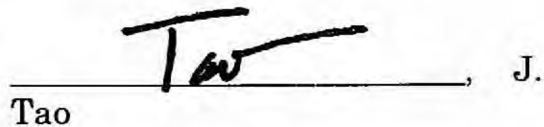
[2]Although Bonham cites to case law concerning the right to due process and also asserts that Grierson picks and chooses when and who to provide orders, which may be in reference to Bonham's right to equal protection, he has not presented any argument or explanation to develop these points, and we therefore decline to address them. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3; *see also Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider issues unsupported by cogent argument).

to consider Bonham's claim for injunctive relief, and we therefore remand for further proceedings consistent with this order.[3]

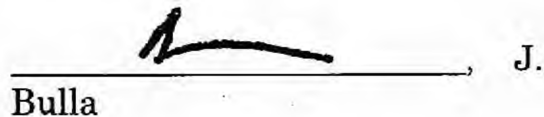
It is so ORDERED.[4]



Gibbons, C.J.



Tao, J.



Bulla, J.

cc: Hon. Joanna Kishner, District Judge
Bryan Phillip Bonham
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

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[3]While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would be futile given that Bonham could not properly be charged a copy fee for the criminal case order denying his motion to correct an illegal sentence under NRS 19.013(6).

[4]Insofar as Bonham 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.