


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTOPHER GLENN WOOLFE,
Appellant,
vs.
COUNTY OF WASHOE, WASHOE
COUNTY SHERIFF'S DEPARTMENT,
SHERIFF DARIN BALAAM; CARLOS
SANDOVAL; BRITT BROWN; AND
EDIK DOMINGUEZ,
Respondents.

No. 83507-COA

FILED

DEC 12 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kristopher Glenn Woolfe appeals from orders of the district court granting the respondents' motions to dismiss and for partial summary judgment. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Motion to dismiss

Woolfe argues the district court erred by dismissing his complaint. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only 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.

First, Woolfe claimed that the respondents arrested him in retaliation for the exercise of his First Amendment rights. Woolfe contended he was arrested because of his tattoos. “The plaintiff pressing a retaliatory arrest claim must plead and prove the absence of probable cause for the arrest.” *Nieves v. Bartlett*, 587 U.S. ___, 139 S. Ct. 1715, 1724 (2019). The State moved for dismissal of this claim because Woolfe failed to allege in his complaint that there was no probable cause for his arrest. In his opposition to the motion to dismiss, Woolfe conceded that he did not challenge the validity of his arrest. Woolfe’s allegations are thus insufficient to state a claim based on retaliatory arrest. Therefore, Woolfe fails to demonstrate that he is entitled to relief based on this claim.

Second, Woolfe claimed that the respondents violated his equal protection rights by arresting him because of his tattoos. “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class.” *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001). Woolfe did not allege that the respondents arrested him based upon his membership in a protected class. Woolfe’s allegations are thus insufficient to state a claim based on a violation of the Equal Protection Clause. Therefore, Woolfe fails to demonstrate that he is entitled to relief based on this claim.

Third, Woolfe claimed that the respondents violated his Eighth Amendment right against cruel and unusual punishment after he was arrested and placed into the county jail. “The Eighth Amendment’s prohibition of cruel and unusual punishments applies only after conviction and sentence.” *Id.* (quotation marks omitted). Woolfe alleged that the events at issue occurred prior to his conviction and sentence. Woolfe’s allegations are thus insufficient to state a claim based on the Eighth Amendment. Therefore, Woolfe fails to demonstrate that he is entitled to relief based on this claim.

Fourth, Woolfe claimed that the respondents were deliberately indifferent to his medical needs because, after his arrest, he was denied water and medical treatment for an unspecified amount of time. Woolfe contended that he was bleeding, his back and neck were sore, and he was denied adequate water while in the holding area of the county jail.

A pretrial detainee may raise a claim of deliberate indifference to his medical care under the due process clause of the Fourteenth Amendment. *Gordon v. County of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018). To establish such a claim, a plaintiff must prove

(i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such

measures, the defendant caused the plaintiff's injuries.

Id. at 1125.

“Deliberate indifference is a stringent standard of fault, requiring proof that a [state] actor disregarded a known or obvious consequence of his action.” *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (internal quotation marks omitted). “[T]he standard we apply is even higher than gross negligence—deliberate indifference requires a culpable mental state.” *Id.* “The state actor must recognize[] [an] unreasonable risk and actually intend[] to expose the plaintiff to such risks without regard to the consequences to the plaintiff.” *Id.* (internal quotation marks omitted). “In other words, the defendant knows that something is going to happen but ignores the risk and exposes [the plaintiff] to it.” *Id.* (internal quotation marks omitted).

Woolfe did not allege that by failing to take reasonable measures to abate a risk that he would suffer serious harm, the respondents were the cause of his injuries. In addition, Woolfe did not allege that the respondents recognized an unreasonable risk and actually intended to expose him to that risk without regard to the consequences. Woolfe’s allegations were thus insufficient to state a claim of deliberate indifference under the Fourteenth Amendment. Therefore, Woolfe fails to demonstrate that he is entitled to relief based on this claim.

Fifth, Woolfe claimed that the respondents conspired to deprive him of his constitutional rights because of his tattoos. 42 U.S.C. § 1985(3) “provides a cause of action if *two or more* persons conspire to deprive an

individual of his constitutional rights.” *Pasadena Republican Club v. Western Justice Ctr.*, 985 F.3d 1161, 1171 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 337 (2021). In order to prove a claim of conspiracy pursuant to that statute, a plaintiff must prove “(1) the existence of a conspiracy to deprive the plaintiff of the equal protection of the laws; (2) an act in furtherance of the conspiracy and (3) a resulting injury.” *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1141 (9th Cir. 2000). “The language requiring intent to deprive of equal protection . . . means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). In order to state a conspiracy claim pursuant to § 1985(3), the class in question must be a suspect or quasi-suspect class as designated by the courts or by Congress. *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992).

Woolfe alleged that the respondents conspired to deprive him of his rights due to his tattoos. However, Woolfe failed to allege that his tattoos placed him in a suspect or quasi-suspect class as designated by the courts or Congress. Accordingly, Woolfe did not allege that the respondents engaged in a conspiracy to deprive him of the equal protection of the laws or that they acted in furtherance of a conspiracy to do so. Woolfe’s allegations were thus insufficient to state a claim of conspiracy pursuant to § 1985(3). Therefore, Woolfe fails to demonstrate that he is entitled to relief based on this claim.

Summary judgment

Woolfe argues the district court erred by granting the respondents’ partial motion for summary judgment. Woolfe claimed that

the respondents used excessive force against him in violation of his constitutional rights. The respondents moved for partial summary judgment and argued in their motion that the body camera records refuted Woolfe's allegations concerning the use of force. Woolfe did not oppose the respondents' motion for summary judgment, and the district court granted the motion pursuant to DCR 13(3).

A district court's decision to grant summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Pursuant to DCR 13(3), "[f]ailure of the opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." The failure to file a timely opposition to a summary judgment motion, in and of itself, is "sufficient grounds for the district court to deem [the] motion unopposed and thus meritorious" under DCR 13(3). *King v. Cartlidge*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005). Woolfe does not demonstrate that he was excused from opposing the motion for partial summary judgment or explain how the district court abused its discretion in granting the motion based on DCR 13(3). Therefore, we affirm the district court's decision to grant the respondents' partial motion for summary judgment.

Appointment of counsel

Woolfe appears to argue that the district court erred by failing to appoint counsel to represent him. However, Woolfe did not have a right to the appointment of counsel in this case. See *Rodriguez v. Eighth Judicial Dist. Court*, 120 Nev. 798, 804, 102 P.3d 41, 45 (2004). Therefore, Woolfe is not entitled to relief based on this claim.

Disqualification

Finally, Woolfe argues that the district court judge should have been disqualified from this matter because that judge presided over his criminal case and because she made snide remarks during this case. However, the “rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification.” *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). Because the district court judge’s assignment to Woolfe’s criminal court matters and her remarks during the course of this matter were insufficient to establish grounds for disqualification, Woolfe is not entitled to relief based on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Kristopher Glenn Woolfe
Sparks City Attorney
Washoe County District Attorney/Civil Division
Washoe District Court Clerk