

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MONTE LEE BURCH, A/K/A MONTY  
LEE BURCH,

Appellant,

vs.

JAMES DZURENDA; MICHAEL  
MINEV; MRLOVE; DR. CADWELL BAR;

THE STATE OF NEVADA; AND

NEVADA DEPARTMENT OF  
CORRECTIONS,

Respondents.

No. 85910-COA

**FILED**

JUN 21 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Monte Lee Burch appeals from a district court summary judgment in a civil rights and torts action. Eleventh Judicial District Court, Pershing County; Jim C. Shirley, Judge.

Burch, who is a transgender woman incarcerated at the Lovelock Correctional Center, initiated the underlying action, against respondents—the Nevada Department of Corrections (NDOC) and various NDOC employees—essentially alleging that they delayed, interfered with, and denied Burch’s requests to obtain female hormones as treatment for gender dysphoria. Burch contended that respondents’ actions and inaction in this regard violated Burch’s constitutional rights and constituted tortious actions and that Burch should be awarded damages and other relief as a result.

Respondents sought to dismiss Burch’s complaint for failure to state a claim for which relief can be granted, and Burch opposed the motion. The district court subsequently granted respondents’ motion in part and denied it in part, dismissing Burch’s claim for cruel and unusual punishment in violation of Article 1, Section 6 of the Nevada Constitution,

as well as Burch's equal protection, negligence, and intentional infliction of emotional distress claims.<sup>1</sup> But the court denied the motion to the extent Burch sought relief for cruel and unusual punishment and deliberate indifference to serious medical needs under the Eighth Amendment to the United States Constitution and allowed those claims to move forward.

Thereafter, Burch's case proceeded forward until respondents moved for summary judgment on Burch's remaining claims. In their motion, respondents argued that summary judgment was warranted as there were no genuine disputes of fact regarding whether respondents personally participated in the alleged unconstitutional acts, and that Burch cannot prove a genuine dispute of fact existed as to their deliberate indifference claim. Respondents further argued that they were entitled to both discretionary act immunity under NRS 41.032 and qualified immunity. Burch opposed the motion, arguing that respondents were not entitled to summary judgment and pointing to Burch's allegations regarding respondents' actions and inaction in response to Burch's effort to obtain treatment. Burch's opposition did not, however, address respondents' immunity arguments.

A hearing was held on the summary judgment motion, after which the court entered an order granting respondents summary judgment on Burch's remaining claims. In particular, the court determined that there was no evidence that the respondents personally participated in the constitutional violations alleged in Burch's remaining claims and that there was no evidence that respondents were "deliberately indifferent to Burch's

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<sup>1</sup>On appeal, Burch presents no arguments regarding the district court's dismissal of these claims, and thus any challenge to this determination has been waived. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that "[i]ssues not raised in an appellant's opening brief are deemed waived").

alleged serious medical needs.” As an additional basis for granting summary judgment, the court determined that, even if there was evidence to support Burch’s claims, respondents were entitled to discretionary act immunity under NRS 41.032 and qualified immunity. On this point, the court found that Burch failed to address these immunity issues in the opposition to the summary judgment motion, and that this failure provided a sufficient basis, “in and of itself,” to grant summary judgment to respondents on immunity grounds. This appeal followed.

On appeal, Burch reiterates the allegations against respondents regarding their allegedly deficient response to Burch’s requests for medical treatment and argues that the district court “failed to discover the material fact that [Burch] has gender dysphoria,” and that deliberate indifference is reflected in the fact that NDOC failed to provide a specialist or doctor with training in transgender care. But Burch fails to address—or even acknowledge—the district court’s alternative basis for granting summary judgment—that respondents were entitled to discretionary act and qualified immunity.

In *Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1289 (Ct. App. 2022), this court held that when a district court provides independent and alternative grounds to support its ruling, the appellant must properly challenge all of the grounds on which the ruling is based, otherwise the ruling will be affirmed. And as discussed above, on appeal, Burch fails to address or otherwise challenge the district court’s determination that summary judgment was warranted because respondents were entitled to discretionary act and qualified immunity. Thus, Burch has waived any challenge to this determination. *Id.* at 1287.

Burch likewise does not present any arguments regarding the district court’s conclusion that, in opposing summary judgment, Burch failed to address respondents’ immunity arguments, such that summary

judgment on immunity grounds was warranted. Thus, Burch has likewise waived any challenge to the district court's conclusion in this regard.<sup>2</sup> See *id.*; *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Nonetheless, we note that the court's determination on this point is proper under Eleventh Judicial District Court Rule 3.11(c), which provides that, "[t]he party filing the opposition bears the responsibility of presenting cogent arguments and relevant authority in support of its position. Failure to address significant issues in the opposition may be considered a confession as to the issue."

Thus, for the reasons set forth above, we affirm the district court's grant of summary judgment to respondents.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>2</sup>The record demonstrates that, after respondents filed their reply to Burch's opposition to the summary judgment motion, Burch filed a "brief in opposition" to summary judgment. In the challenged order, the district court noted that Burch's filing of this document, which it referred to as a "second opposition," was improper. On appeal, Burch does not mention the "brief in opposition" or assert that the district court's refusal to consider that filing was improper. Thus, any arguments in this regard have been waived. See *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

cc: Hon. Jim C. Shirley, District Judge  
Monty Lee Burch  
Attorney General/Carson City  
Clerk of the Court/Court Administrator