

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant/Cross-Respondent,
vs.

THE STATE OF NEVADA; NEVADA
DEPARTMENT OF CORRECTIONS;
JAMES DZURENDA, DIRECTOR OF
THE NEVADA DEPARTMENT OF
CORRECTIONS, IN HIS OFFICIAL
CAPACITY; CHARLES DANIELS, IN
HIS INDIVIDUAL CAPACITY; TIM
GARRETT; AND CARTER POTTER,
Respondents/Cross-Appellants.

No. 86217-COA

FILED

AUG 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

Bryan Phillip Bonham appeals from the final judgment in an inmate litigation matter. The State of Nevada, Nevada Department of Corrections, James Dzurenda, Charles Daniels, Tim Garret, and Carter Potter (collectively referred to herein as NDOC) cross-appeal from the same decision. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge.

Bonham, an inmate, sued NDOC, alleging that his mother deposited \$150 into his inmate trust account on January 8, 2020, and that NDOC thereafter made a series of deductions from the account to cover his photocopying and postage costs that violated NRS 209.246¹ and NDOC

¹In 2023, the Nevada Legislature amended and renumbered NRS 209.246, effective June 13, 2023. 2023 Nev. Stat., ch. 417, § 6, at 2511-2512. For clarity, we cite to the version of NRS 209.246 that went into effect on July 1, 2001, which was the effective version when the challenged deductions from Bonham's inmate trust account were made.

Administrative Regulation (AR) 258² because the total amount of the deductions exceeded 50 percent of the amount that was deposited into his account. As a result, Bonham further alleged that NDOC deprived him of his constitutionally protected property interest in the funds in his inmate trust account and were therefore liable under 42 U.S.C. § 1983. Based on those allegations, Bonham sought compensatory and punitive damages and an injunction requiring NDOC to return the funds that were deducted from his inmate trust account.

NDOC eventually filed a motion to dismiss or, in the alternative, for summary judgment, which construed Bonham's complaint as presenting only claims under § 1983 for violation of the Fourth Amendment, the Takings Clause of the Fifth Amendment, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. NDOC maintained that it was entitled to relief since it was not a proper party to Bonham's § 1983 claims. Bonham opposed that motion and filed a motion to amend his complaint. Without conducting a hearing, the district court entered summary judgment in favor of NDOC for the reasons stated in its motion.

Bonham appealed that decision, which we affirmed in part, reversed in part, and remanded for further proceedings. *Bonham v. State*, No. 83458-COA, 2022 WL 832262 (Nev. Ct. App. Mar. 17, 2022) (Order Affirming in Part, Reversing in Part & Remanding). In particular, this court affirmed the summary judgment in favor of NDOC on Bonham's §

²AR 258 has been amended many times. For clarity, we cite to the version of AR 258 that went into effect on May 15, 2018, which was the version in effect when the challenged deductions from Bonham's inmate trust account were made.

1983 claims, reasoning that the district court correctly determined that NDOC was not a proper party for purposes of § 1983. *Id.* at *1-2. However, because it did not appear that the district court considered whether the allegations in Bonham's complaint were sufficient to present a valid claim against NDOC under state law based on Nevada's notice pleading standard, we reversed in part and remanded for the district court to address that issue. *Id.* at 2.

On remand, the district court directed the parties to submit supplemental briefing concerning NDOC's prior motion to dismiss or for summary judgment. Bonham then filed a supplemental brief in which he generally failed to address whether the allegations in his complaint were sufficient to assert a viable state law claim against respondents, although he continued to maintain that the challenged deductions were improper because they exceeded 50 percent of the \$150 deposit. Instead, Bonham argued the merits of his § 1983 claims, presented allegations concerning deductions that followed additional deposits to his inmate trust account, and asserted that the NRS are invalid in their entirety. Around this time, Bonham also filed documents styled as a "Second Amended Complaint," "Supplemental Pleading in Support of his Request to Add Counts of Interfering with Access to Courts, Adding New Defendants with Evidence in Support," and "Motion in Response to Order for Supplemental Pleading and Response to Motion to Dismiss," all of which the district court eventually struck on grounds that they were filed without leave of court or service on NDOC.

For its part, NDOC filed a supplemental brief in which it argued that Bonham could not reassert his § 1983 claims given this court's decision in Docket No. 83458-COA; that his supplemental brief failed to address

whether the allegations in the operative complaint were sufficient to assert a valid state law claim; and that, regardless, the operative complaint did not present a valid state law claim. With respect to the final point, NDOC argued that NRS 209.246 and AR 258 provided that it could only deduct an amount equal to 50 percent of the \$150 deposit, or \$75, to repay postage and photocopying costs that it incurred on Bonham's behalf prior to the deposit, but did not impose any limitations on the deductions it could make from Bonham's inmate trust account to cover postage and photocopying costs that he authorized subsequent to the deposit. Moreover, NDOC argued that it properly deducted \$75 from Bonham's inmate trust account at the time the \$150 deposit posted to repay the postage and photocopying costs that it had previously incurred on his behalf, and that the subsequent deductions that Bonham challenged were all proper because they covered the postage and photocopying costs that Bonham authorized after the \$150 deposit.

Following a hearing, the district court entered judgment in favor of Bonham, concluding that NDOC was only authorized to deduct an amount equal to 50 percent of the \$150 deposit for his postage and photocopying costs and that the challenged deductions exceeded that amount by \$9. Bonham appealed that decision, and NDOC cross-appealed.

Bonham's appeal

In his appeal, Bonham presents arguments concerning his original § 1983 claims and he contends that, in evaluating whether NDOC improperly deducted funds from his inmate trust account, the district court should not have limited its consideration to the challenged deductions, but instead, should have also considered whether deductions that followed various other deposits into his inmate trust account were unauthorized. However, in Docket No. 83458-COA, this court affirmed the summary

judgment in favor of NDOC on Bonham's § 1983 claims because NDOC (including the respondent NDOC officials and employees) were not proper parties for purposes of those claims. Because that decision is the law of the case, Bonham was not entitled to resurrect those claims before the district court and cannot do so now before this court. *See Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) ("When an appellate court states a principle or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be followed throughout its subsequent progress, both in the lower court and upon subsequent appeal." (alteration and internal quotation marks omitted)). Moreover, because Bonham's original complaint, which is the operative complaint in this case, only concerned the propriety of a specific series of deductions that followed the \$150 deposit, his arguments concerning any other deductions and deposits are not properly at issue in this case. *See Coury v. Robison*, 115 Nev. 84, 89 n.3, 976 P.2d 518, 521 n.3 (1999) (concluding that arguments concerning fraud and misrepresentation were not properly before the supreme court because corresponding causes of action were not asserted in the plaintiff's complaint). Consequently, relief is unwarranted on these bases.

Bonham also argues that he should have been permitted to amend his complaint. We review the district court's rulings on requests to amend a complaint for an abuse of discretion. *Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 191, 300 P.3d 124, 131 (2013).

Insofar as Bonham's argument is directed at the motion to amend his complaint that he filed prior to his appeal in Docket No. 83458-COA, the district court implicitly denied that motion when it granted

respondents' motion for summary judgment on Bonham's § 1983 claims. See *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (concluding that the district court's failure to rule on a motion constituted a denial of the motion). But Bonham did not present any argument concerning the denial of this motion to amend in his prior appeal in Docket No. 83458-COA and he waived the issue as a result. See *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 606 n.1, 427 P.3d 113, 117 n.1 (2018) (providing that arguments not raised on appeal are deemed waived); *Jimenez v. Blue Martini Las Vegas, LLC*, No. 77226-COA, 2019 WL 5681078, at *2 (Nev. Ct. App. Oct. 31, 2019) (Order of Affirmance) (applying this principal to conclude that, when issues were not raised in a prior appeal even though they could and should have been, the issues are waived in a subsequent appeal). While Bonham filed a document styled as a "Second Amended Complaint" along with two documents that appear to be related following the remand in Docket No. 83458-COA, the district court struck those documents on grounds that they were filed without leave of court or service on respondents. Because Bonham fails to address the propriety of the court's reasoning in striking these documents, he has 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) (explaining that arguments not raised in an appellant's opening brief are deemed waived).

Finally, to the extent that Bonham sought leave to amend his complaint in any of his other post-remand filings, which was implicitly denied when the district court entered judgment in his favor, he did not attach a copy of any proposed amended complaint to these filings, and, therefore, failed to comply with EDCR 2.30(a) (stating that "[a] copy of a proposed amended pleading must be attached to any motion to amend the

pleading” and that “[n]o pleading will be deemed to be amended until there has been compliance with this rule”). *See Gardner v. Martino*, 563 F.3d 981, 991 (9th Cir. 2009) (explaining that where a local rule requires the attachment of a proposed amended complaint to a request for leave to amend, it is within the district court’s discretion to deny the request based on the party’s failure to attach the proposed pleading); *see also Bd. of Gallery of History, Inc.*, 116 Nev. at 289, 994 P.2d at 1150. Consequently, Bonham has failed to demonstrate that the district court abused its discretion by focusing on his original complaint. *See Holcomb Condo. Homeowners’ Ass’n, Inc.*, 129 Nev. at 191, 300 P.3d at 131.

Thus, for the reasons set forth above, Bonham has failed to set forth any grounds for relief in his appeal, and we therefore affirm the challenged decision to the extent the district court limited its consideration to Bonham’s original complaint and did not consider any § 1983 claims.

NDOC’s cross-appeal

In its cross-appeal, NDOC contends that the district court should have entered summary judgment in its favor on any state law claims presented by Bonham because the challenged deductions from his inmate trust account were authorized. NDOC maintains that NRS 209.246 and AR 258 imposed a cap on the deductions that it could make from Bonham’s inmate trust account to repay the postage and photocopying costs that it incurred on his behalf prior to the \$150 deposit, but that these provisions do not limit the deductions that it could take from Bonham’s account for postage and photocopying costs that Bonham authorized subsequent to the deposit. Based on this interpretation of NRS 209.246 and AR 258, NDOC contends that each of the challenged deductions were proper. Bonham disagrees, arguing that, under NRS 209.246 and AR 258, once NDOC

deducted an amount equal to 50 percent of the \$150 deposit in connection with his postage and photocopying costs, it could make no further deductions from his inmate trust account to cover such costs until a new deposit posted to his account.³

This court reviews a district court order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

The parties' arguments require us to review NDOC's interpretation of its governing statutes and regulations. While we ordinarily review statutory interpretation issues de novo, we will "defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008). "When reviewing de novo, we will interpret a statute or regulation by its plain meaning unless the statute or regulation is ambiguous," *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020),

³Insofar as Bonham contends that the NRS are invalid in their entirety, the Nevada Supreme Court has consistently rejected materially similar arguments. *See, e.g., Langford v. State*, Nos. 78525 & 76075, 2019 WL 14409980, at *4 (Nev. Mar. 29, 2019) (Order of Affirmance). In line with the Nevada Supreme Court's past decisions, we conclude that Bonham's arguments on this point fail.

or the plain meaning “would provide an absurd result,” *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P.3d 850, 854 (2014). Whenever possible, we interpret statutes or regulations within a common statutory or regulatory scheme in harmony to avoid unreasonable results and to further the general purpose of the statutes or regulations. *S. Nev. Homebuilders Ass’n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).

NRS 209.246(3) authorizes the NDOC Director to promulgate regulations setting forth criteria for reasonable deductions from funds credited to an inmate’s account to “[r]epay [various] costs incurred by [NDOC] on behalf of the offender,” including postage and photocopying costs. Based on that authority, the NDOC Director promulgated AR 258.05(1), which provides that the NDOC Director, or his designee, may deduct 50 percent from any money deposited into an inmate’s account from a source other than wages for “costs incurred by [NDOC] on behalf of the inmate per NRS 209.246.” Because these authorities use the word “repay,” which is defined as “to pay back,” *see Repay, Merriam-Webster’s Collegiate Dictionary* (11th ed. 2020), and “incur,” which is defined as “[t]o suffer or bring on oneself (a liability or expense),” *Incur, Black’s Law Dictionary* (12th ed. 2024), we conclude that they unambiguously authorize deductions to be taken from an inmate trust account to pay back postage and photocopying costs for which NDOC becomes liable on behalf of the inmate—in other words, debts owed to NDOC by the inmate. Moreover, insofar as AR 258.05(1) specifies that the NDOC Director or his designee may deduct “50 percent from any money deposited into an inmate’s account” to satisfy inmate debts, it not only unambiguously limits the amount of deductions that may be made, but also anticipates that the deductions will

be used to satisfy debts that preexist the deposit. Thus, we conclude that, when taken together, NRS 209.246(3) and AR 258.05(1) impose a 50-percent cap on the deductions that may be taken from funds deposited into an inmate's trust account to repay preexisting postage and photocopying debts that the inmate owes to NDOC. However, nothing in the plain language of those authorities creates any similar restriction on the deductions that may be made from an inmate's trust account for postage and photocopying costs that the inmate authorizes subsequent to a deposit while the inmate has a positive account balance.

Our conclusion in this respect is consistent with the regulatory scheme concerning inmate finances and access to postage and photocopies. In particular, NDOC's ARs provide for indigent or indigent-at-the-moment inmates to receive postage and photocopies in connection with certain litigation activities on credit from NDOC, with the proviso that such inmates must pay back their debts when funds become available. *See, e.g.*, AR 722.01(7) (explaining that "[i]nmates are not constitutionally entitled to free copy work" and authorizing indigent inmates to "request limited copies that will be charged to the inmate[] . . . to be reimbursed to [NDOC] when funds are received or accrued in the inmate's [trust account]"); AR 722.08(11) (generally authorizing indigent or indigent-at-the-moment inmates to accumulate unlimited legal postage department charges, but providing that the inmate "must sign a brass slip to ensure the State is reimbursed once the funds are available"); *see also* NDOC Glossary (defining "[i]ndigent inmate" as "[i]nmates whose trust account balance is \$10 or less for the entire previous month"); AR 750.02(8)(A) (concerning inmate general correspondence and mail and explaining that inmates are indigent-at-the-moment when their "accounts are not accessible to them,

i.e., frozen for longer than 30 days”). NRS 209.246(3) and AR 258.05(1) provide the means by which NDOC can ensure that indigent or indigent-at-the-moment inmates make payments on their debts for legal postage and photocopies once funds are deposited into their accounts.

By contrast, NDOC’s ARs do not include any mechanism for inmates who are not indigent or indigent-at-the-moment to accumulate debts to NDOC for postage or photocopies, whether for legal or other purposes. Consequently, NRS 209.246(3) and AR 258.05(1), which as noted above, only apply to debts incurred before a deposit is made, necessarily do not provide the means for satisfying any postage and photocopy purchases made by an inmate while he or she does not qualify as indigent or indigent-at-the-moment. Instead, when such inmates purchase postage or photocopies, they are effectively withdrawing funds from their inmate trust accounts to cover 100 percent of the purchase. *See* AR 258.01(1) (providing that the NDOC Director or his or her designee “may permit withdrawals for immediate expenditures by the inmate for personal needs”).

Thus, in light of the foregoing, we conclude that although there is a 50-percent cap on the deductions that may be made from funds that are deposited into an inmate trust account from sources other than wages to pay back the inmate’s preexisting, predeposit postage and photocopying debts under NRS 209.246(3) and AR 258.05(1), that cap does not apply to deductions made from the inmate’s trust account for postage and photocopying costs that an inmate authorizes following a deposit, provided that the inmate does not qualify as indigent or indigent-at-the-moment.

Here, the record includes the daily transaction summary for Bonham’s inmate trust account, which shows that, at the time the \$150 deposit posted to Bonham’s account, NDOC made 14 deductions, totaling

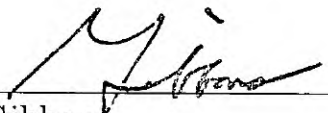
\$75, to repay Bonham's preexisting debts for legal photocopies. Because \$75 was 50 percent of the \$150 deposit, those deductions were proper under NRS 209.246(3) and AR 258.05(1). The daily transaction summary also shows that the deductions that Bonham challenges, which were made from his account beginning several hours after the \$150 deposit posted and running through March 26, 2020, were all made for postage and photocopying charges that Bonham authorized following the deposit.⁴ And Bonham does not suggest that he was indigent or indigent-at-the-moment when he authorized those charges such that he should have been able to

⁴Insofar as Bonham argues that he executed brass slips authorizing these charges and that a debt covered by the 50-percent cap is created anytime a brass slip is executed, his argument is inconsistent with the purpose of brass slips when used by inmates who are not indigent or indigent-at-the-moment. Compare NDOC Glossary (defining "[b]rass [s]lip" as the form "by which inmates can access their individual trust account"); *with, e.g.,* AR 722.08(11)(c) (providing that indigent or indigent at the moment inmates must execute a brass slip to ensure the State is reimbursed for legal postage received on credit). Bonham also asserts in the alternative that he executed the brass slips prior to the deposit. However, as discussed above, NDOC produced the daily transaction summary showing that Bonham authorized the postage and photocopying charges at issue here following the \$150 deposit. Although Bonham, as the party opposing summary judgment, had the opportunity to overcome NDOC's initial showing by producing evidence establishing a genuine dispute of material fact concerning when he authorized the postage and photocopying charges, *see Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007) (discussing the parties' respective burdens in moving for or opposing summary judgment), he did not produce any brass slips or other evidence to show that he authorized the postage and photocopying charges prior to the deposit. Nor did Bonham, in opposing NDOC's motion for summary judgment, follow the procedure for obtaining additional time to conduct discovery so as to obtain such evidence. *See* NRCPC 56(d)(2) (providing that if the nonmoving party demonstrates by affidavit or declaration that "it cannot present facts essential to justify the opposition," the court may allow time to take discovery).

receive legal postage and photocopies on credit under AR 722.01(7) and AR 722.08(11). *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Therefore, we conclude that each of the challenged deductions were proper under the applicable statutes and regulations. Given that all the deductions at issue in this case were proper, Bonham's claims failed as a matter of law to the extent they were based on state law, and NDOC was therefore entitled to summary judgment. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Thus, in light of the foregoing, we affirm the challenged decision insofar as the district court limited its consideration to Bonham's original complaint and did not consider any § 1983 claims. We reverse the district court's judgment in favor of Bonham and remand with instructions for the district court to enter summary judgment in favor of NDOC. *See SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 135 Nev. 346, 352, 449 P.3d 461, 466 (2019) (reversing an order granting summary judgment and directing entry of judgment on the opposing party's counter-motion for summary judgment); *SFR Invs. Pool 1, LLC v. First Horizon Home Loans*, 134 Nev. 19, 25, 409 P.3d 891, 895 (2018) (doing the same).

It is so ORDERED.⁵


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

⁵Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Chief Judge, Eighth Judicial District Court
Hon. Michael A. Cherry, Senior Justice
Bryan Phillip Bonham
Clark County District Attorney
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk