IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAINE ANTON CRAWLEY,
Appellant,
vs.
NEVADA DEPARTMENT OF CORRECTIONS; LIUTENENT R. ASHCRACT; OFFICER ROBERT ROBISON; AND OFFICER ROBERT SUWE,
Respondents.

No. 87961-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Daine Anton Crawley appeals from a district court order granting a motion to set aside a default judgment. First Judicial District Court, Carson City; James E. Wilson, Judge.

Crawley, an inmate, filed the underlying civil rights action against the Nevada Department of Corrections (NDOC) and three NDOC officers, requesting injunctive and compensatory relief and alleging federal and state causes of action. Specifically, Crawley alleged violations of his due process rights under the Fourteenth Amendment and claims for emotional distress, and violations of various administrative regulations based on the NDOC officers knowingly utilizing unreliable tests on his mail to detect drugs, withholding evidence of tests, and punishing him for false positive results. He asserted that this conduct interfered with his right to communicate with his counsel and family members. In the jurisdiction

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section of his complaint, Crawley listed 42 U.S.C. § 1983 and "state tort claims."

After serving the NDOC officers pursuant to NRCP 4.2, when the NDOC officers failed to respond to his complaint, Crawley obtained a default judgment and a monetary award. In its order granting Crawley a default judgment, the district court found that the officers violated his First Amendment rights and his Fourteenth Amendment due process rights, as well as an administrative regulation. Further, the court ordered that none of the officers retaliate against Crawley for filing his complaint. While the district court entered a default judgment against the individual officers, it did not enter judgment against NDOC, as it found NDOC was "not a named party" in the case.

Crawley thereafter filed a motion to enforce the judgment, and the NDOC officers filed a motion to set aside the default judgment pursuant to NRCP 60(d)(2), asserting, in pertinent part, that the district court lacked subject matter jurisdiction because NDOC was a necessary party and Crawley failed to serve the person serving in the office of the administrative head of NDOC pursuant to NRS 41.031(2). Crawley opposed the motion, contending that he properly served the requisite parties. Following a hearing, the district court entered a written order granting the motion to set aside the default judgment after concluding that it "appear[ed]" that it lacked jurisdiction based on Crawley's failure to serve NDOC as required by NRS 41.031(2). The district court also denied Crawley's requests to enforce the default judgment and for injunctive relief. This appeal followed.

On appeal, Crawley argues that he properly served the complaint so the default judgment should remain in place.

"We review the district court's decision regarding whether to set aside a default for an abuse of discretion." *Blige v. Terry*, 139 Nev., Adv. Op. 60, 540 P.3d 421, 426 (2023). NRCP 60(d)(2) provides that a court may "set aside a default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service" upon motion filed within six months after written notice of entry of a default judgment is served.

NRS 41.031(2) provides that, in order to properly invoke the State's waiver of sovereign immunity and pursue a civil action against the State, a plaintiff must name "the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit." It further requires that, "[i]n an action against the State of Nevada, the summons and a copy of the complaint must be served upon . . . the Attorney General, or a person designated by the Attorney General" and the "administrative head of the named agency." NRS 41.0337 requires that, to pursue a tort claim against a state employee, the complaint must name the State as a party pursuant to NRS 41.031. "Thus, NRS 41.031 and NRS 41.0337 require that, to pursue a claim against the State or a state employee acting within the scope of his or her employment, a plaintiff must name the State of Nevada as a defendant." *Craig v. Donnelly*, 135 Nev. 37, 39, 439 P.3d 413, 415 (Ct. App. 2019).

Here, the district court properly set aside the default judgment with respect to Crawley's state law claims because Crawley failed to effectuate service on NDOC. Although Crawley served the office of the Attorney General with the summons and complaint, that alone was insufficient to effectuate service on NDOC. Crawley was additionally required—but failed—to serve the "administrative head of the named agency" pursuant to NRS 41.031(2)(b).

Moreover, the failure to comply with the service requirements of NRS 41.031(2) meant that the State was not a party to this action. *See Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995) ("To qualify as a party, an entity must have been named and served."); *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 448, 874 P.2d 729, 734, 735 (1994) (noting that the supreme court has traditionally taken a narrow definition of the term "party" and defined it as a "person or entity [that] has been served with process, appeared in the court below and has been named as a party of record in the trial court" (emphasis omitted)). Because the State must be a party to an action when State employees are sued in tort for acts or omissions within the scope of their duties, NRS 41.0337, Crawley's state law claims against the NDOC officers cannot stand. *Cf. Craig*, 135 Nev. at 39-40. 439 P.3d at 415 (affirming dismissal of state tort claims against State employee defendants based on the plaintiff's failure to properly invoke the State's waiver of sovereign immunity). We therefore conclude that the district court properly set aside the default judgment with respect to Crawley's state law claims. *See Blige*, 139 Nev., Adv. Op. 60, 540 P.3d at 426; *see also* NRCP 60(d)(2).

However, this does not end our analysis because the district court did not limit its decision to set aside the default judgment to Crawley's state law claims. Instead, the court set aside the default judgment in its entirety based on the NDOC officers' NRS 41.031-based argument that the court lacked jurisdiction over the claims before it due to Crawley's failure to properly serve NDOC in accordance with that statute.[1]

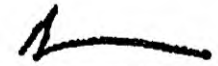
As detailed above, a default judgment in Crawley's favor was expressly entered on both Crawley's state law claims and his § 1983 claims, finding that the NDOC officers had violated his First Amendment rights and his Fourteenth Amendment Due Process rights. To the extent the court purported to set aside the default judgment as to the § 1983 claims, it is well established that NRS 41.031's requirements do not apply to § 1983 claims, such that this statute could not provide a proper basis for setting aside the default judgment as to those claims. *See Craig*, 135 Nev. at 40-41, 439 P.3d at 415-16. Because the district court did not cite any other reasons for setting aside the default judgment that could have applied to the § 1983 claims, the decision to grant the motion to set aside the default judgment as to those claims was improper. *See Blige*, 139 Nev., Adv. Op. 60, 540 P.3d at 426. Accordingly, we must reverse the district court's

[1]As noted above, the district court determined that NDOC was not a named party in the underlying case, and thus, it lacked jurisdiction to enter a default judgment against NDOC. And because no default judgment was entered against NDOC, which was never made a party to the case, *see Valley Bank*, 110 Nev. at 446, 448, 874 P.2d at 734, 735 (discussing when an entity is considered a party to a case), the motion to set aside the default judgment was only filed on behalf of the individual NDOC officers.

decision to set aside the default judgment with respect to the § 1983 claims and remand for further proceedings on those claims.[2]

It is so ORDERED.[3]

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

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[2]Although this court generally will not grant a pro se appellant relief without first providing respondents an opportunity to file an answering brief, *see* NRAP 46A(c) (stating the same), in light of the basis for our reversal, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

[3]To the extent that Crawley challenges the district court's denial of his post-judgment requests for injunctive relief, he has waived this argument because he failed to address the basis for the district court's decision on this issue, *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), and cogently argue his position on this issue on appeal, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider assertions that are not supported by cogent argument). Thus, we do not disturb the denial of this request.

cc: First Judicial District Court, Department 2
Daine Anton Crawley
Attorney General/Carson City
Carson City Clerk