

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID NORTH,
Appellant,
vs.
CORECIVIC, INC.,
Respondent.

No. 87087-COA

FILED

DEC 24 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

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

David North appeals from an order of the district court granting a motion to dismiss in a pretrial detainee litigation matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

North is a pretrial detainee at Nevada Southern Detention Center located in Pahrump. The facility is owned and operated by respondent CoreCivic, Inc. (CoreCivic), pursuant to a correctional services agreement with the United States government.

On June 24, 2021, North filed a complaint in which he alleged that he was attacked by fellow detainees of the detention center on December 21, 2018, and that he suffered injuries as a result of the attack. North further alleged that several employees of CoreCivic failed to stop the attack and that they did not come to his aid as quickly as they should have. North also alleged that CoreCivic failed to prevent the attack and had policies that permitted the attack to occur. Based upon those allegations, North alleged he was entitled to monetary damages pursuant to federal law,

state torts law, and the Nevada Constitution. North also filed an amended complaint in which he reiterated the aforementioned factual allegations.

North filed several motions requesting the district court to aid him in serving the individual defendants and filed a timely motion requesting additional time to complete service of process. The district court rejected North's request for the court to help him complete service of process but granted North's request for an enlargement of time to complete service and directed North to complete service by December 17, 2021. The court also provided notice to North that failure to timely complete service will result in dismissal of his action.

North subsequently completed service of process upon CoreCivic but he was unable to serve the named individual defendants with the complaint. CoreCivic removed this matter to federal court. The federal court screened North's complaint and dismissed his claims raised pursuant to 42 U.S.C. §1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The federal court thereafter remanded the case back to state court for further consideration of his state law claims.

The notice of entry of remand was filed on April 21, 2022, and North filed motions seeking a default judgment on April 29, 2022, and May 6, 2022. CoreCivic opposed the motions for default judgment and contended that North failed to serve it with those motions. North also filed several untimely motions seeking a further extension of time to complete service of process on the individual defendants.

CoreCivic filed a motion to dismiss this matter on May 13, 2022. In its motion, CoreCivic contended that dismissal was appropriate based on

NRS 11.190(4)(e) because North's causes of action accrued when he was attacked on December 21, 2018, and he filed his complaint more than two years after that date. CoreCivic also argued dismissal was appropriate because North failed to state a claim against CoreCivic for which relief could be granted. In addition, CoreCivic asserted that dismissal was warranted based on the doctrine of claim preclusion. CoreCivic also separately moved for dismissal of claims against any individual defendants based on North's failure to complete service of process on those persons.

North opposed the motion to dismiss. He contended the statutes of limitations should not bar his claims. North further contended that claim preclusion should not apply to this matter and that his allegations stated valid claims against CoreCivic. Finally, North argued that he should be permitted leave to amend his complaint to cure any potential defects.

The district court ultimately entered an order granting CoreCivic's motion to dismiss. The court agreed that NRS 11.190(4)(e) barred North's causes of action because they accrued when he was attacked on December 21, 2018, and he filed his complaint more than two years after that date. The court also agreed that dismissal was appropriate because North failed to state a claim against CoreCivic for which relief could be granted. In addition, the court concluded that dismissal was warranted based on the doctrine of claim preclusion as North had previously brought suit against CoreCivic in federal court and the federal court issued a screening order dismissing that action without prejudice. Moreover, the court concluded that North did not demonstrate good cause for his untimely requests for an enlargement of time to complete service for the individual

defendants and that dismissal was therefore warranted for claims against those individual defendants due to North's failure to serve them. Finally, the district court denied North's motion to amend the complaint because it concluded that amendment was futile and it denied North's motion for a default judgment. This appeal followed.

Motions for default judgment

First, North argues that the district court abused its discretion by denying his requests for default judgment against CoreCivic and by instead considering CoreCivic's motion to dismiss. North contends entry of a default judgment was appropriate because CoreCivic did not file an answer or other response to his complaint within 14 days of the filing of the notice of entry of the federal court's remand order as required by NRCP 81(c). However, "[d]efault judgments are only available as a matter of public policy when an essentially unresponsive party halts the adversarial process." *Lindblom v. Prime Hosp. Corp.*, 120 Nev. 372, 376, 90 P.3d 1283, 1285 (2004).

The record before this court plainly demonstrates that CoreCivic appeared in this matter and removed it to federal court before North requested a default judgment. In his informal brief, North notes that CoreCivic filed motions and appeared before the federal court. Accordingly, North does not demonstrate that CoreCivic was an essentially unresponsive party that halted the adversarial process. *See id.* In light of the foregoing, we conclude North fails to demonstrate that the district court's decision to reject his requests for a default judgment against CoreCivic amounted to an abuse of discretion. *See Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (explaining that appellate courts will not disturb the

district court's decisions on appeal when they are supported by substantial evidence, which is evidence that "a sensible person may accept as adequate to sustain a judgment").

Motion to dismiss

Next, North challenges the district court's decision to grant CoreCivic's motion to dismiss. We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff's factual allegations as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim "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.

Because Nevada is a "notice-pleading" jurisdiction, *see* NRCP 8(a), a complaint need only set forth a short and plain statement with sufficient facts to demonstrate the necessary elements of a claim for relief so that the opposing party "has adequate notice of the nature of the claim and relief sought." *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992); *see also Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878-79 (Ct. App. 2020) (discussing Nevada's liberal notice pleading standard). "[W]e liberally construe pleadings to place matters into issue which are fairly noticed to an adverse party." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (internal quotation marks omitted).

First, North challenges the district court's decision to dismiss his state tort claims pursuant to the statutes of limitations. North contends that the statutes of limitations should be tolled because the claims did not accrue until 2019, when he first made contact with witnesses to the events surrounding the attack from the fellow detainees.

A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. NRCP 12(b)(5); *see, e.g., Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (1993). Dismissal of a claim is not appropriate unless the statute of limitations bar is apparent on the face of the complaint. *See Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) ("When the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper.").

"The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). "Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action." *Id.*

North does not dispute that his state law claims of gross negligence, assault, battery, and defamation had two-year periods of limitation. *See* NRS 11.190(4)(c) (stating that "[a]n action for libel, slander, assault, battery, false imprisonment or seduction" has a two-year period of limitations); *Lund v. Eighth Jud. Dist. Ct.*, 127 Nev. 358, 364 n.6, 255 P.3d 280, 285 n.6 (2011) (applying NRS 11.190(4)(c) to a defamation claim); NRS 11.190(4)(e) (stating that "an action to recover damages for injuries to a

person or for the death of a person caused by the wrongful act or neglect of another” has a two-year period of limitations). However, taking North’s allegations as true, *see Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672, he was attacked and sustained injuries on December 21, 2018. He also alleged that he was aware of the CoreCivic employees’ actions during and directly after the incident. Based on the allegations contained in his complaint, the aforementioned causes of action accrued when he suffered the attack and any resulting injuries on December 21, 2018. Thus, North was required to file his complaint on or before December 21, 2020, but he did not file the underlying action until June 24, 2021. Because the expiration of the two-year periods of limitations under NRS 11.190(4) (c) and (e) was apparent on the face of North’s complaint, and North failed to timely file his complaint within the limitations period for his state tort causes of action, we conclude the district court did not err by dismissing these causes of action.¹

Second, North argues the district court erred by dismissing his claim under the Nevada Constitution alleging that CoreCivic violated his due process rights by failing to protect him. Under Nevada’s due process clause, “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Nev. Const. art. 1, § 8(2). In his complaint, North alleged that CoreCivic violated his due process rights by failing to separate him and to protect him from other dangerous inmates.

¹We note that the Nevada Supreme Court has recently issued an opinion explaining that the Governor’s emergency directives issued in response to the COVID-19 pandemic tolled the statutes of limitations for 122 days, *see Dignity Health v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 40, 550 P.3d 341, 343-44 (2024), but North filed his state tort claims late even accounting for that tolling period.

“Jailers have a duty to protect pretrial detainees from violence at the hands of other inmates,” and a pretrial detainee may raise a failure to protect claim as a violation of the detainee’s right to due process. *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070-71 (9th Cir. 2016) (allowing a pretrial detainee to raise a failure to protect claim under the due process clause of the Fourteenth Amendment to the United States Constitution); *see also Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012) (explaining that the Nevada Constitution’s Due Process Clause “mirrors” its federal counterpart, and federal authority is persuasive when performing due process analyses (citing *Rodriguez v. Eighth Jud. Dist. Ct.*, 120 Nev. 798, 808 n.22, 102 P.3d 41, 48 n.22 (2004))). To establish a violation of this duty, a plaintiff must “show that the prison officials acted with deliberate indifference.” *Castro*, 833 F.3d at 1068 (internal quotation marks omitted). The elements of a pretrial detainee’s failure-to-protect claim are:

- (1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined;
- (2) Those conditions put the plaintiff at substantial risk of suffering serious harm;
- (3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and
- (4) By not taking such measures, the defendant caused the plaintiff’s injuries.

Id. at 1071.

“[A] pretrial detainee who asserts a due process claim for failure to protect [must] prove more than negligence but less than subjective

intent—something akin to reckless disregard.” *Id.*; see also Restatement (Second) of Torts: Reckless Disregard of Safety Defined § 500 cmt. a (Am. Law Inst. 2016) (recognizing that “reckless disregard” may be shown by an objective standard under which an individual “is held to the realization of the aggravated risk which a reasonable [person] in his place would have, although he does not himself have it”). “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).

Here, North alleged that CoreCivic systematically permitted situations in which North and other detainees engaged in acts of violence and thus created unsafe conditions. North also alleged that as a result of CoreCivic’s actions, he received injuries in an attack from fellow detainees.

Taking North’s allegations as true, see *Buzz Stew LLC*, 124 Nev. at 228, 181 P.3d at 672, we conclude the facts North described are sufficient to satisfy Nevada’s notice pleading standard, see *Droge*, 136 Nev. at 308-09, 468 P.3d at 878 (“A plaintiff who fails to use the precise legalese in describing his grievance but who sets forth the facts which support his complaint thus satisfies the requisites of notice pleading.” (internal quotation marks omitted)). Here, North sufficiently alleged that CoreCivic, by permitting these unsafe conditions, made intentional decisions concerning the conditions under which he was confined, that it did not take reasonable measures to abate the risk even though it reasonably should have appreciated the high risk North faced, and that those unsafe conditions put North at risk of serious harm. North also sufficiently alleged

that CoreCivic caused his injuries by allowing the conditions that resulted in the attack he suffered from the fellow detainees.

Thus, North sufficiently alleged facts demonstrating the existence of each of the elements of a failure-to-protect claim. Accordingly, the district court erroneously dismissed North's complaint on the basis that he failed to allege a set of facts that, if true, entitle him to relief against CoreCivic pursuant to the due process clause of the Nevada Constitution. *See Nev. Const. art. 1, § 8(2).*

We note the district court also dismissed North's failure-to-protect claim based on statute of limitations grounds and the doctrine of claim preclusion. However, we conclude the district court erred in so doing. First, the district court found that North's failure-to-protect claim was barred pursuant to the two-year limitation period for personal injury actions and based its decision upon the application of law concerning actions raised pursuant to 42 U.S.C. § 1983. *See Wilson v. Garcia*, 471 U.S. 261, 276 (1985) (explaining that § 1983 actions are considered to be personal injury actions and are subject to the forum state's applicable statute of limitations); *see also* NRS 11.190(4)(e) (stating that a personal injury action has a two-year period of limitations). However, the district court reviewed North's failure-to-protect claim under the Nevada Constitution. The Nevada Supreme Court has previously applied the catch-all statute of limitations from NRS 11.220 to claims raised pursuant to the Nevada Constitution. *See City of Fernley v. State, Dep't of Tax*, 132 Nev. 32, 43-44, 366 P.3d 699, 707 (2016). Therefore, the district court should not have applied a two-year statute of limitations to North's claims under the Nevada Constitution. Because the four-year period of limitations should have

applied to North's state constitutional claims, he had until December 21, 2022, to raise his failure-to-protect claim and he raised that claim well before that date.

We also conclude that the district court erroneously dismissed North's failure to protect claim based on the doctrine of claim preclusion. "A district court's decision as to claim preclusion is reviewed de novo." *Holland v. Anthony L. Barney, Ltd.*, 139 Nev., Adv. Op. 49, 540 P.3d 1074, 1084 (Ct. App. 2023). Claim preclusion "applies when (1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Id.* (quoting *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008)). "While the requirement of a valid final judgment does not necessarily require a determination on the merits, it does not include a case that was dismissed without prejudice or for some reason (jurisdiction, venue, failure to join a party) that is not meant to have preclusive effect." *Five Star Cap. Corp.*, 124 Nev. at 1054 n.27, 194 P.3d at 713 n.27. As stated previously, the district court relied upon a federal court screening order that dismissed an action North previously brought against CoreCivic before that court. In the federal court's screening order, it dismissed North's claims raised under federal law without prejudice. The federal court noted that North alleged the types of claims that normally fall under state tort law, such as negligence, assault, or battery. The court noted "[i]f North wishes to bring these [state law] claims against [CoreCivic employees] based on their negligent or deliberate conduct in allowing other inmates to attack him, he must file a new lawsuit in state court."

Based on a plain reading of the federal court's screening order, we conclude it was not meant to have preclusive effect. *See id.* We therefore conclude that the doctrine of claim preclusion did not apply to bar North's failure-to-protect claim based on the screening order, and thus, the district court erred by dismissing that claim based on claim preclusion.

Based on the foregoing, we conclude that the district court erroneously dismissed North's failure-to-protect claim. *See Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672. Accordingly, we reverse this portion of the district court's decision and direct the district court, on remand, to allow additional proceedings concerning North's failure-to-protect claim.

Third, North argues the district court erred by dismissing his claim alleging that CoreCivic violated his inalienable rights. Here, North generally argues that his right to safety and happiness was violated when he was attacked by fellow detainees but North does not present cogent argument as to how CoreCivic violated his inalienable rights. As a result, North has failed to present any cogent argument with regard to this claim, and thus this court need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 337, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Failure to serve

Next, North argues that the district court abused its discretion by dismissing the individual defendants based on North's failure to timely effect service of process.

This court reviews a district court's decision to grant a motion to dismiss based on the failure to timely effect service of process for an abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). An abuse of discretion occurs when the court's

decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). Substantial evidence is evidence that a reasonable person may accept as adequate to sustain the judgment. *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 145, 242 (2007).

A district court must grant a motion to dismiss based on a failure to timely effectuate service of process if the plaintiff fails to serve a defendant with process within 120 days of filing the complaint and the district court does not grant an extension of time to complete service. *See* NRCP 4(e)(1) (“The summons and complaint must be served upon a defendant no later than 120 days after the complaint is filed, unless the court grants an extension of time under this rule.”); NRCP 4(e)(2) (providing that “[i]f service of the summons and complaint is not made upon a defendant before the 120-day service period—or any extension thereof—expires, the court must dismiss the action, without prejudice, as to that defendant upon motion or upon the court’s own order to show cause”).

First, North contends that the district court did not give him notice of its intent to dismiss the individual defendants based on his failure to serve those parties.

Here, CoreCivic moved for dismissal of any claims brought against the individual defendants based on North’s failure to timely complete service of process. In light of the motion requesting dismissal based upon North’s failure to complete service of process, the district court was not required to also issue its own order to show cause. *See* NRCP 4(e)(2). Substantial evidence supports the district court’s finding that North did not timely serve the individual defendants. In light of the foregoing,

North's argument in this regard fails to demonstrate the district court abused its discretion in dismissing the individual defendants for failure to serve. *See Saavedra-Sandoval*, 126 Nev. at 595, 245 P.3d at 1200.

Second, North argues the district court abused its discretion by declining to enlarge the time for him to complete service of process on the individual defendants. This court reviews a district court's order denying a motion for an extension of time to serve process for an abuse of discretion. *See id.* at 598, 245 P.3d at 1202. "While good cause for failing to file a timely motion and good cause for granting an enlargement of time may be the same in some instances, failure to address the issue of cause for filing an untimely motion ends the district court's inquiry." *Id.*

In his untimely motions for enlargements of time to complete service, North discussed why he was unable to complete service in a timely manner but he did not specifically address the issue of good cause for filing an untimely motion for additional time to serve or even acknowledge that his motions were untimely. In light of the foregoing, we conclude that district court did not abuse its discretion by denying North's untimely motions for an extension of time to serve process and subsequently dismissing his complaint as to the individual defendants for failure to serve them. *See id.*

Motion for leave to amend the complaint

Next, North argues that the district court abused its discretion by denying his motion for leave to amend his complaint. "A motion for leave to amend is left to the sound discretion of the trial judge, and the trial judge's decision will not be disturbed absent an abuse of discretion." *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004).

“Leave to amend . . . should not be granted if the proposed amendment would be futile.” *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017) (internal quotation marks omitted).

Here, the district court reviewed North’s proposed amendments to his complaint and found that they failed to correct any of the reasons upon which it was granting CoreCivic’s motion to dismiss. The court therefore found that amendment was futile and denied North’s motion for leave to amend. Based on our review of the record, we conclude that North fails to demonstrate the district court abused its discretion by denying his motion for leave to amend.² *See State, Univ. & Cmty. Coll. Sys.*, 120 Nev. at 988, 103 P.3d at 19.

Accordingly, based on the foregoing analysis, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³



_____, C.J.
Gibbons



_____, J.
Bulla



_____, J.
Westbrook

²In light of our decision to reverse the dismissal of North’s failure-to-protect claim, the district court may elect to reconsider North’s request to amend his complaint as to that claim.

³Insofar as North raises 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: Hon. Robert W. Lane, District Judge
David North
Struck Love Bojanowski & Acedo, PLC
Dennett Winspear, LLP
Nye County Clerk