

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH BARLOW,

Appellant,

vs.

THE STATE OF NEVADA; ROBERT
BAYER; JOHN IGNACIO; RICK
BENEFIELD; SGT. BIANCHI; DEBRA
CUTSHAW; AND C/O HILL,
Respondents.

No. 38988

FILED

MAR 13 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint for failure to state a claim upon which relief may be granted, pursuant to NRCP 12(b)(5). In reviewing an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.¹ In addition, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true.² Having reviewed the record in

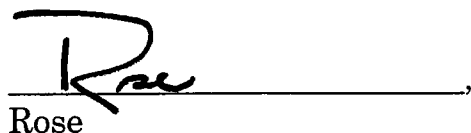
¹See Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

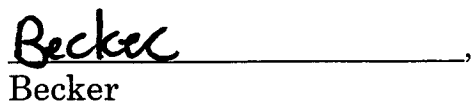
²See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

this matter, we conclude that the district court properly dismissed the complaint.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Shearing

 _____, J.
Rose

 _____, J.
Becker

cc: Hon. Michael R. Griffin, District Judge
Attorney General/Carson City
Keith Barlow
Carson City Clerk

³See Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989) (holding that "neither a State nor its officials acting in their official capacities [were] 'persons' under § 1983"); see also Northern Nev. Ass'n Injured Workers v. SIIS, 107 Nev. 108, 114-15, 807 P.2d 728, 732 (1991) (recognizing that officials acting in their official capacities are not "persons" under 42 U.S.C. § 1983, and may not be sued in state court under the federal civil rights statute).