

FILED

MAR 02 PM 0:37

- 1 Case NO. PI 16-1044
- 2 Dept. NO. 1
- 3 Pursuant to NRS 239B.230,
- 4 this document does not contain the
- 5 Social Security number of any person.

[Signature]
FILED
 FEB 08 2018

ELIZABETH A. BROWN
 CLERK OF SUPREME COURT
[Signature]
 DEPUTY CLERK

6

7 IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF PERSHING

9

10 TEDDIE C. CRAIG,

11 Plaintiff,

12 VS.

NOTICE OF APPEAL

13

14 DR. WILLIAM DONNELLY et al

15 Defendants

16

17 NOTICE IS GIVEN that Plaintiff Teddie C. Craig

18 in Pro Se, hereby appeals to the Nevada Supreme

19 Court, The Judge's ORDER GRANTING DEFENDANT'S

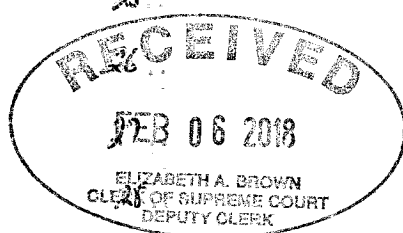
20 MOTION TO DISMISS § 1983 Civil Rights Complaint,

21 and relevant documents on file with this Court, filed,

22 and dated January /23/ 2018.

23

24 Dated this 31 day of Jan 2018



Signature *[Signature]*

Name Teddie Craig # 62269


LCC-1200 Prison Rd Lovelock, NV 89419

Plaintiff In Pro Se

16-05228

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 31 day of Jan, 20 18, by placing same in the U.S. Mail via prison law library staff:

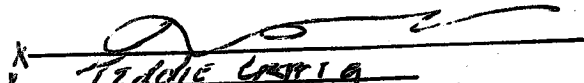

Teddie Carrig # 62269
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. PT 16-1044 does not contain the social security number of any person.

Dated this 31 day of Jan, 20 18.


Teddie Carrig

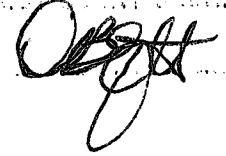
Petitioner In Pro Se

FILED

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Case No. PI 16-1044

Dept No. I



IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF PERSHING

TEDDIE C. CRAIG,)
Appellant,)
Vs.)
DR. DONNELLY, et al.,)
Respondents)
/

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
Teddie C. Craig
2. Identify the judge issuing the decision, judgment or order appealed from:
Honorable Jim C. Shirley
3. Identify each appellant and the name and address of counsel for each appellant: (the use of et al. to denote parties is prohibited):
Pro Per appellant: Teddie C. Craig
Inmate No. 62269
1200 Prison Rd./LCC
Lovelock, NV 89419
Pro Per for Appellant
4. Identify each respondent and the name and address of counsel (the use of et al. to denote parties is prohibited):
Dr. Donnelly, Nurse Ballantyne, Nurse Nancy, Nurse Donnelly, Sgt.
Chappy and Heather B. Zana-Deputy Attorney General, 100 North Carson
St., Carson City, NV 89701

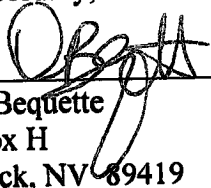
- 1
- 2
- 3 5. Indicate whether any attorney identified above in response to question 3 or
- 4 4 is not licensed to practice law in Nevada and, if so, whether the district
- 5 court granted that attorney permission to appear under SCR 42(attach a
- 6 copy of any district court order granting such permission):
- 7 No attorney for appellant; pro per: Attorney for Respondents: Licensed
- 8 Deputy Attorney General.
- 9
- 10 6. Indicate whether appellant was represented by appointed or retained
- 11 counsel in the district court:
- 12 No: Pro Per
- 13
- 14 7. Indicate whether appellant is represented by appointed or retained counsel
- 15 on appeal:
- 16 No: Pro per
- 17
- 18 8. Indicate whether appellant was granted leave to proceed in forma pauperis,
- 19 and the date of entry of the district court order granting such leave:
- 20 Order to Proceed in Forma Pauperis-Filed 10/14/16
- 21
- 22 9. Indicate the date the proceedings commenced in the district court (e.g. date
- 23 of complaint, indictment, information or petition was filed):
- 24 Civil Rights Complaint Pursuant to 42 USC 1983 filed 10/14/16.
- 25
- 26 10. Provide a brief description of the nature of the action and result in the
- district court, including the type of judgment or order being appealed and
- the relief granted by the district court: There a Civil Rights Complaint
- Pursuant to 42 USC 1983 filed on 3/3/17. There was a Defendant's Motion
- to Stay Proceedings Pending Decision on Defendants' Motion to Dismiss
- Plaintiff's Complaint for Lack of Subject Matter Jurisdiction filed 7/6/17
- and an Order Granting Defendants' Motion to Dismiss filed on 1/23/18.
- There was a Notice of Appeal filed on 2/2/18.
11. Indicate whether the case has previously been the subject of an appeal to or
- original writ proceeding in the Supreme Court and, if so, the caption and
- Supreme Court docket number of the prior proceeding: This case has not
- been previously appealed.
12. Indicate whether this appeal involves child custody or visitation: No
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- /
- /

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: No, an Order Granting Defendants' Motion to Dismiss was filed on 1/23/18.

Dated this 5th day of February, 2018

Court Clerk


Dawn Bequette
PO Box H
Lovelock, NV 89419
(775) 273-2410

Case #: PI-16-1044
Judge: SHIRLEY, JIM C
Date Filed: 09/13/16 Department: 01
Case Type: CVRVIO CIVIL RIGHTS VIOLATION
Title/Caption: Teddie C. Craig
vs
Dr. Donnelly, et al

Defendant(s)
DR. DONNELLY

Attorney(s)
ATTORNEY GENERAL

Plaintiff(s)
CRAIG, TEDDIE C.

Attorney(s)
PRO PER

Disp/Judgment: MTDS Date: 06/22/17

Filings:

Fees

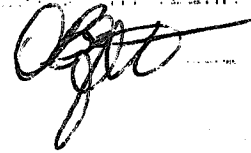
Date	Pty	Filing	
9/13/16	P	APPLICATION TO PROCEED IN FORMA PAUPERIS	FILED
9/13/16	P	CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT	FILED
10/14/16	C	ORDER TO PROCEED IN FORMA PAUPERIS	FILED
10/14/16	P	CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. 1983	FILED
10/26/16	P	SUMMONS 5/DONNELLY-BALLANTYNE-NANCY-DONNELLY-CHAPPY	ISSUED
1/09/17	P	SUMMONS 1/BALLANTYNE	ISSUED
1/25/17	P	SUMMONS 5/DONNELLY-BALLANTYNE-NANCY-DONNELLY-CHAPPY	FILED
3/03/17	D	ANSWER TO COMPLAINT	FILED
3/15/17	P	REPLY TO DEFENDANT'S ANSWER	FILED
6/22/17	D	DEFENDANT'S MOTION TO DISMISS	FILED
6/30/17	P	MOTION FOR SUMMARY JUDGMENT PURSUANT TO NEVADA RULE OF	FILED
	P	CIVIL PROCEDURE RULE (56)	FILED
6/30/17	P	MOTION TO STRIKE NRS 41.031 PURSUANT TO NRCP 12F	FILED
7/06/17	D	DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING DECISION	
	D	ON DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S	
	D	COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION	FILED
7/13/17	P	PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANTS' MOTION	
	P	TO STAY PROCEEDINGS, PENDING DECISION ON DEFENDANTS'	
	P	MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF	FILED
	P	SUBJECT MATTER JURISDICTION	
7/19/17	D	REPLY IN SUPPORT OF DEFENDANTS' MOTION TO STAY	
	D	PROCEEDINGS PENDING DECISION OF DEFENDANTS' MOTION	
	D	TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF SUBJECT	FILED
	D	MATTER JURISDICTION	FILED
11/07/17	P	REQUEST FOR SUBMISSION OF MOTION	
1/12/18	P	MOTION TO EXPEDITE ACTION PURSUANT TO TITLE-28:1567 -	
	P	RELEVANT TO 42 U.S.C. 1983 CIVIL RIGHTS COMPLAINT &	FILED
	P	MOTION TO SHOW CAUSE	FILED
1/12/18	P	REQUEST FOR SUBMISSION OF MOTION	FILED
1/23/18	C	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS	FILED
1/23/18	C	NOTICE OF ENTRY OF ORDER	FILED
2/02/18	P	NOTICE OF APPEAL	FILED
2/05/18	C	CASE APPEAL STATEMENT	

FILED

Case No. PI 16-1044
Dept. No. 1

2018 JAN 23 AM 9:57

Pursuant to NRS 239B.030,
this document does not contain the
social security number of any person.



IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

TEDDIE C. CRAIG,
Plaintiff,

vs.

DR. DONNELLY, et al.,
Defendants.

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

THE ABOVE-ENTITLED MATTER came before the Court on January 18, 2018, for a determination on Defendants' Motion to Dismiss filed on June 22, 2017. Defendants' Motion asserts that the failure of the Plaintiff to name the State of Nevada deprives this Court of subject matter jurisdiction, thus mandating that the case be dismissed. After reviewing Defendants' Motion, Plaintiff's Response, and the other filings in this case, the Court grants the Motion for the following reasons:

I. Facts/Procedural History

Plaintiff, Teddy Craig, is an inmate in the custody of the Nevada Department of Corrections ("NDOC"). Plaintiff filed the underlying civil rights complaint pursuant to 42 U.S.C. § 1983 on October 14, 2016, alleging violations of his first, eighth, and fourteenth amendment rights due retaliatory actions, destruction of personal property, and the prescription of inappropriate medication. Complaint at 3. Defendants filed an Answer to Complaint, denying the allegations, on March 3, 2017, and Plaintiff filed a Reply to Defendants' Answer on March 15, 2017. Subsequently, Defendants' filed their Motion to Dismiss, claiming that the State of Nevada

1 and the NDOC are shielded from this action by sovereign immunity. Motion to Dismiss at 1.
2 Specifically, Defendant alleges that Plaintiff did not properly name the State of Nevada or the
3 NDOC as required by state law, thus depriving this Court of subject matter jurisdiction. Id. at 1-
4 2.

5 Seemingly in response to Defendants' Motion to Dismiss, Plaintiff filed a Motion to
6 Strike NRS 41.031 Pursuant to NRCP 12(f) on June 30, 2017, attempting to correct the
7 jurisdictional problems by withdrawing claims under that statute. At the same time,¹ Plaintiff
8 filed Plaintiff's Motion in Opposition to Defendants' Motion to Dismiss & Motion by Plaintiff to
9 Order Defendants to Respond to Plaintiff's Motion for Summary Judgment – Rule (56)
10 ("Plaintiff's Opposition"). Again, in Plaintiff's Opposition, Plaintiff states that he is "hereby
11 withdraw[ing] (NRS 41.031) from this action. Plaintiff's Opposition at 3.

12 Additionally, within Plaintiff's Opposition, he claims that the NDOC is an arm of the
13 State and is not a person for the purposes of 42 U.S.C. § 1983, "therefore Plaintiff deny [sic] any
14 claims as the State of Nevada or (N.D.O.C.) Plaintiff only claim [sic] the named defendants in
15 their individual capacity under the color of State law." Plaintiff's Opposition at 3.

16 Subsequently, Plaintiff filed a Motion for Summary Judgment Pursuant to Nevada Rule
17 of Civil Procedure Rule (56); Defendants filed a Motion to Stay Proceedings Pending Decision
18 on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject Matter Jurisdiction;
19 Plaintiff filed a Motion in Opposition to Defendants' Motion to Stay Proceedings Pending
20 Decision on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject Matter
21 Jurisdiction; Defendants filed Reply in Support Defendants' Motion to Dismiss Plaintiff's
22 Complaint for Lack of Subject Matter Jurisdiction; and Plaintiff filed a Motion to Expedite
23 Action Pursuant to Title – 28:1567 – Relevant to 42 U.S.C. 1983 Civil Rights Complaint &
24 Motion to Show Cause.

25
26 ¹ Plaintiff's Motion in Opposition to Defendant's Motion to Dismiss & Motion
27 by Plaintiff to Order Defendants to Respond to Plaintiff's Motion for Summary
28 Judgment – Rule (56) was stapled to the back of Plaintiff's Motion to Strike
NRS 41.031 Pursuant to NRCP 12(f) and was therefore never filed as a separate
document. Nevertheless, the Court considered the document as if it were filed
properly.

1 II. Legal Standard

2 The authority of a court to adjudicate any case is based on a court having subject matter
3 jurisdiction over the case. Any party may contest a court's subject matter jurisdiction and
4 "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction
5 of the subject matter, the court shall dismiss the action." NRCP 12(h)(3). "Lack of subject matter
6 jurisdiction can be raised at any time during the proceedings and is not waivable." Mainor v.
7 Nault, 120 Nev. 750, 761 n.9, 101 P.3d 308, 315 n.9 (2004) (citing Swan v. Swan, 106 Nev. 464,
8 469, 796 P.2d 221, 224 (1990)). A waiver of sovereign immunity is a prerequisite to the Court's
9 exercise of subject matter jurisdiction. See Presidential Gardens Assocs. v. United States ex rel.
10 Sec'y of Hous. & Urban Dev., 175 F.3d 132, 139 (2d Cir.1999); Feist v. Dirr, 609 S.E.111, 114
11 (2004) (trial courts lack subject matter jurisdiction in the absence of a waiver of sovereign
12 immunity); Federal Deposit Ins. Corp. v. Peabody, N.E., Inc., 239 Conn. 93, 99, 680 A.2d 1321
13 (1996) ("[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is
14 therefore a basis for granting a motion to dismiss." (*Internal quotation marks omitted.*)); Texas
15 Department of Transportation v. Jones, 8 S.W.3d 636, 638 (Tex.1999) (governmental immunity
16 from suit defeats a trial court's subject matter jurisdiction); Lamar University v. Doe, 971 S.W.2d
17 191, 195 (Tex.App.-Beaumont, 1998) (when a lawsuit is barred by sovereign immunity,
18 dismissal with prejudice for want of jurisdiction is proper); Williams v. Davenport, 306
19 Ill.App.3d 465, 467-68, 239 Ill.Dec. 374, 713 N.E.2d 1224 (1999) (must have specific waiver of
20 sovereign immunity); Johnson v. Clarke, 258 Neb. 316, 603 N.W.2d 373 (1999) (If an action is
21 barred by sovereign immunity, the district court lacks subject matter jurisdiction over the
22 proceeding); and Riley v. State, 244 Neb. 250, 254-55, 506 N.W.2d 45, 48 (1993).

23 III. Analysis

24 Defendants argue that Plaintiff's Complaint should be dismissed because Plaintiff failed
25 to take the necessary steps to invoke the sovereign immunity waiver under the statute. Under the
26 doctrine of sovereign immunity, generally, the state and its political subdivisions enjoy blanket
27 immunity from tort liability, which immunity has been waived only on a limited basis. Clark
28 County School Dist. v. Richardson Const., Inc., 168 P.3d 87, 123 Nev. 382 (2007). Under the

1 current waiver of immunity framework, Nevada can be held liable for injuries resulting from
2 tortious acts that occur during course and scope of a state worker's employment if the State of
3 Nevada is properly sued. State, Dept. of Human Resources, Div. of Mental Hygiene and Mental
4 Retardation v. Jimenez, 935 P.2d 274, 113 Nev. 356 (1997) *opinion withdrawn, rehearing*
5 *dismissed* 941 P.2d 969, 113 Nev. 735. Specifically, a waiver of sovereign immunity is properly
6 invoked when the State of Nevada is named as a defendant in a suit involving a claim for
7 damages based upon tortious activity. NRS 41.031(2). However, the failure of a claimant to
8 invoke a waiver of sovereign immunity deprives the court of subject matter jurisdiction. See
9 Jimenez v. State, 98 Nev. 204, 205, 644 P.2d 1023, 1024 (1982). *See Supra*.

10 Nevertheless, in Plaintiff's Motion to Strike NRS 41.031, he attempts to correct the
11 jurisdictional problem created by not properly naming the state. However, Plaintiff's attempts
12 fall short. Similarly, in his Opposition Motion, Plaintiff tries to fix the defect by stating that his
13 claims only relate to the "named defendants in their individual capacity under the color of State
14 law." Therefore, Plaintiff's claims clearly relate to alleged tortious conduct by State employees
15 in the course and scope of their employment. Plaintiff failed to name the State of Nevada as a
16 defendant. Instead, Plaintiff only named Diane Ballantyne, Samuel Chapman, William Donnelly,
17 Russelle Donnelly, and Nancy Marvel,² each a Nevada Department of Corrections Employee, as
18 the Defendants. Nevada law provides that "[n]o tort action may be brought against a person who
19 is named as a defendant in the action solely because of an alleged act or omission relating to the
20 public duties . . . unless the State or appropriate political subdivision is named a party defendant
21 . ." NRS 41.0337 (2). Plaintiff cannot simply get around state law by "striking" jurisdiction
22 under statutes supplying the correct procedures to invoke a waiver of sovereign immunity.

23 Additionally, Plaintiff does not provide any argument that would exempt this matter from
24 the sovereign immunity doctrine and a lack of subject matter jurisdiction. The facts are clear and
25 the law is also clear. Defendants were acting within the scope of their employment and any
26

27 ² Plaintiff's Complaint did not contain the full or in some cases the correct
28 names of the named individuals. Nevertheless, for the sake of clarity, the
Court refers to the individuals by their correct names as provided in
Defendants' briefings.

lawsuit necessarily involves a suit against the State of Nevada. Therefore, NRS 41.0337 (2) would require that Plaintiff to name the State of Nevada, as well as the Defendants, for any tort claims.

Thus, Plaintiff's failure to bring suit against the State of Nevada as a party defendant resulted in a failure to properly invoke sovereign immunity. Therefore, NRCP 12(b)(1) requires this Court to dismiss this action for lack of subject matter jurisdiction.

THE COURT FINDS that it lacks subject matter jurisdiction over this appeal because Plaintiff failed to name the State of Nevada as a defendant, thereby invoking a waiver of sovereign immunity as provided for in statute.

THE COURT THEREFORE ORDERS that Defendants' Motion to Dismiss is granted.

THE COURT FURTHER ORDERS that Plaintiff's Motion to Strike NRS 41.031 Pursuant to N.R.C.P. 12(f) is denied. While the Plaintiff contends he is not suing the State of Nevada, as explained *supra*, NRS 41.0337 (2) requires the State to be named in suits against employees working in their official capacity and Plaintiff cannot correct jurisdictional faults by striking statutes that conflict with his position.

THE COURT FURTHER ORDERS that the case is dismissed without prejudice.

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1 THE COURT FURTHER ORDERS that Plaintiff's Motion for Summary Judgment
2 Pursuant to Nevada Rule of Civil Procedure Rule (56); Defendants' Motion to Stay Proceedings
3 Pending Decision on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject
4 Matter Jurisdiction; Plaintiff's Motion in Opposition to Defendants' Motion to Stay Proceedings
5 Pending Decision on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject
6 Matter Jurisdiction; Defendants' Reply in Support Defendants' Motion to Dismiss Plaintiff's
7 Complaint for Lack of Subject Matter Jurisdiction; and Plaintiff's Motion to Show Cause are
8 hereby denied because they are no longer relevant based upon the Court's rulings as set forth
9 above.³

10
11 DATED this 19th day of January, 2018.

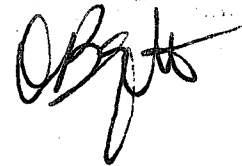
12
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14 Honorable Jim C. Shirley
15 Eleventh Judicial District Court Judge
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28 ³ By granting Defendants' Motion to Dismiss, the Court has expedited this
action, thereby granting Plaintiff's Motion to Expedite Action Pursuant to
Title - 28:1567 - Relevant to 42 U.S.C. 1983 Civil Rights Complaint.

FILED

2018 JAN 23 PM 9:57

CASE NO. PI 16-1044
DEPT. NO. I



IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF PERSHING

TEDDIE C. CRAIG,
Plaintiff,

vs.

**NOTICE OF ENTRY
OF ORDER**

DR. DONNELLY, et al.,
Defendants.

PLEASE TAKE NOTICE that on January 23, 2018, the Court
entered an order in this matter, a true and correct copy of which is
attached to this notice.

You may appeal to the Supreme Court from the Order of this Court.
If you wish to appeal, you must file a Notice of Appeal with the Clerk of this
Court within 33 days after the date this notice is mailed to you. This notice
was mailed on January 23, 2018.

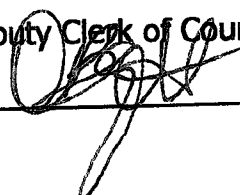
DATED: January 23, 2018

(Seal)

Franklin Wilkerson

Deputy Clerk of Court

By



Deputy


CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Pershing County District Clerk's Office, and that on the 23rd day of January, 2018, I caused to be served through the United States Postal Service, a true and correct copy of the ORDER GRANTING DEFENDANTS' MOTION TO DISMISS and NOTICE OF ENTRY OF ORDER, first class postage prepaid to the following:

Office of the Attorney General
ATTN: Heather B. Zana
100 North Carson St.
Carson City, NV 89701-4717

Teddie C. Craig #62269
1200 Prison Rd./LCC
Lovelock, NV 89419

DATED this 23rd day of January, 2018.



Deputy Clerk

Case No. PI 16-1044
Dept. No. 1

**Pursuant to NRS 239B.030,
this document does not contain the
social security number of any person.**

D. BEQUETTE

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

TEDDIE C. CRAIG,
Plaintiff,

vs.

**DR. DONNELLY, et al.,
Defendants.**

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ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

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I. Facts/Procedural History

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4 2.

5 Seemingly in response to Defendants' Motion to Dismiss, Plaintiff filed a Motion to
6 Strike NRS 41.031 Pursuant to NRCP 12(f) on June 30, 2017, attempting to correct the
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26 ¹ Plaintiff's Motion in Opposition to Defendant's Motion to Dismiss & Motion
27 by Plaintiff to Order Defendants to Respond to Plaintiff's Motion for Summary
28 Judgment – Rule (56) was stapled to the back of Plaintiff's Motion to Strike
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document. Nevertheless, the Court considered the document as if it were filed
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1 II. Legal Standard

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7 Nault, 120 Nev. 750, 761 n.9, 101 P.3d 308, 315 n.9 (2004) (citing Swan v. Swan, 106 Nev. 464,
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19 Ill.App.3d 465, 467-68, 239 Ill.Dec. 374, 713 N.E.2d 1224 (1999) (must have specific waiver of
20 sovereign immunity); Johnson v. Clarke, 258 Neb. 316, 603 N.W.2d 373 (1999) (If an action is
21 barred by sovereign immunity, the district court lacks subject matter jurisdiction over the
22 proceeding); and Riley v. State, 244 Neb. 250, 254-55, 506 N.W.2d 45, 48 (1993).

23 III. Analysis

24 Defendants argue that Plaintiff's Complaint should be dismissed because Plaintiff failed
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26 doctrine of sovereign immunity, generally, the state and its political subdivisions enjoy blanket
27 immunity from tort liability, which immunity has been waived only on a limited basis. Clark
28 County School Dist. v. Richardson Const., Inc., 168 P.3d 87, 123 Nev. 382 (2007). Under the

1 current waiver of immunity framework, Nevada can be held liable for injuries resulting from
2 tortious acts that occur during course and scope of a state worker's employment if the State of
3 Nevada is properly sued. State, Dept. of Human Resources, Div. of Mental Hygiene and Mental
4 Retardation v. Jimenez, 935 P.2d 274, 113 Nev. 356 (1997) *opinion withdrawn, rehearing*
5 *dismissed* 941 P.2d 969, 113 Nev. 735. Specifically, a waiver of sovereign immunity is properly
6 invoked when the State of Nevada is named as a defendant in a suit involving a claim for
7 damages based upon tortious activity. NRS 41.031(2). However, the failure of a claimant to
8 invoke a waiver of sovereign immunity deprives the court of subject matter jurisdiction. See
9 Jiminez v. State, 98 Nev. 204, 205, 644 P.2d 1023, 1024 (1982). *See Supra*.

10 Nevertheless, in Plaintiff's Motion to Strike NRS 41.031, he attempts to correct the
11 jurisdictional problem created by not properly naming the state. However, Plaintiff's attempts
12 fall short. Similarly, in his Opposition Motion, Plaintiff tries to fix the defect by stating that his
13 claims only relate to the "named defendants in their individual capacity under the color of State
14 law." Therefore, Plaintiff's claims clearly relate to alleged tortious conduct by State employees
15 in the course and scope of their employment. Plaintiff failed to name the State of Nevada as a
16 defendant. Instead, Plaintiff only named Diane Ballantyne, Samuel Chapman, William Donnelly,
17 Russelle Donnelly, and Nancy Marvel,² each a Nevada Department of Corrections Employee, as
18 the Defendants. Nevada law provides that "[n]o tort action may be brought against a person who
19 is named as a defendant in the action solely because of an alleged act or omission relating to the
20 public duties . . . unless the State or appropriate political subdivision is named a party defendant .
21 . ." NRS 41.0337 (2). Plaintiff cannot simply get around state law by "striking" jurisdiction
22 under statutes supplying the correct procedures to invoke a waiver of sovereign immunity.

23 Additionally, Plaintiff does not provide any argument that would exempt this matter from
24 the sovereign immunity doctrine and a lack of subject matter jurisdiction. The facts are clear and
25 the law is also clear. Defendants were acting within the scope of their employment and any
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27 ² Plaintiff's Complaint did not contain the full or in some cases the correct
28 names of the named individuals. Nevertheless, for the sake of clarity, the
Court refers to the individuals by their correct names as provided in
Defendants' briefings.

lawsuit necessarily involves a suit against the State of Nevada. Therefore, NRS 41.0337 (2) would require that Plaintiff to name the State of Nevada, as well as the Defendants, for any tort claims.

Thus, Plaintiff's failure to bring suit against the State of Nevada as a party defendant resulted in a failure to properly invoke sovereign immunity. Therefore, NRCP 12(b)(1) requires this Court to dismiss this action for lack of subject matter jurisdiction.

THE COURT FINDS that it lacks subject matter jurisdiction over this appeal because Plaintiff failed to name the State of Nevada as a defendant, thereby invoking a waiver of sovereign immunity as provided for in statute.

THE COURT THEREFORE ORDERS that Defendants' Motion to Dismiss is granted.

THE COURT FURTHER ORDERS that Plaintiff's Motion to Strike NRS 41.031 Pursuant to N.R.C.P. 12(f) is denied. While the Plaintiff contends he is not suing the State of Nevada, as explained *supra*, NRS 41.0337 (2) requires the State to be named in suits against employees working in their official capacity and Plaintiff cannot correct jurisdictional faults by striking statutes that conflict with his position.

THE COURT FURTHER ORDERS that the case is dismissed without prejudice.

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1 THE COURT FURTHER ORDERS that Plaintiff's Motion for Summary Judgment
2 Pursuant to Nevada Rule of Civil Procedure Rule (56); Defendants' Motion to Stay Proceedings
3 Pending Decision on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject
4 Matter Jurisdiction; Plaintiff's Motion in Opposition to Defendants' Motion to Stay Proceedings
5 Pending Decision on Defendants' Motion to Dismiss Plaintiff's Complaint for Lack of Subject
6 Matter Jurisdiction; Defendants' Reply in Support Defendants' Motion to Dismiss Plaintiff's
7 Complaint for Lack of Subject Matter Jurisdiction; and Plaintiff's Motion to Show Cause are
8 hereby denied because they are no longer relevant based upon the Court's rulings as set forth
9 above.³

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11 DATED this 19th day of January, 2018.

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14 Honorable Jim C. Shirley
15 Eleventh Judicial District Court Judge
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28 ³ By granting Defendants' Motion to Dismiss, the Court has expedited this
action, thereby granting Plaintiff's Motion to Expedite Action Pursuant to
Title - 28:1567 - Relevant to 42 U.S.C. 1983 Civil Rights Complaint.

1 Case No. PI 16-1044

2 Dept No. 1

3
4 IN THE ELEVENTH JUDICIAL DISTRICT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF PERSHING
6

7 TEDDIE C. CRAIG,)
8 Appellant,)
9 vs.)
10 DR. DONNELLY, et al.,)
11 Respondents.)

12 **CERTIFICATE**

13 State of Nevada)
14 : ss.
15 County of Pershing)

16 I, Franklin Wilkerson, Court Administrator, do hereby certify that the following
17 are true and correct copies of the original documents in the above-entitled case, which
18 was appealed to the Supreme Court.

19 IN TESTIMONY WHEREOF, I have hereunto set my hand and
20 affixed the seal of said Court, at Lovelock, Nevada, this 5th day of February, 2018.

21 Franklin Wilkerson
22 Court Administrator

23 By 
24 Deputy Clerk

25
26 RECEIVED
FEB 06 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK