

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

STEVE EGGLESTON,

Appellant,

vs.

GEORGINA STUART; CLARK COUNTY,
NEVADA; LISA CALLAHAN; AND BRIAN
CALLAHAN,

Respondents.

Supreme Court No. 80838

District Court Case No. A748919
Electronically Filed
May 08 2020 03:49 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENTS' MOTION TO DISMISS

COME NOW Respondents Georgina Stuart and Clark County (“Respondents”), by and through their attorneys of the law firm OLSON CANNON GORMLEY & STOBERSKI, and hereby move this Court to dismiss Appellant’s appeal in part pursuant to NRAP 3(a) and 4(a)(1). This Motion is made and based upon all papers, pleadings and records on file herein, the attached Memorandum of Points and Authorities, and such oral argument, testimony and evidence as the Court may entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Appellant's purported appeal of the 7/31/17 Order granting Defendants' first motion to dismiss is not before this Court and untimely and, therefore, should be dismissed.

II.

LEGAL ARGUMENT

On 4/8/2020, this Court issued its Notice that Appellant's Docketing Statement was due in 21 days, which would have been 4/29/2020. Appellant's Docketing Statement is untimely because it was filed on May 1, 2020. Also, the Certificate of Service in the Docketing Statement is blank as to the date of any service and there is no signature thereon supporting service.

In the Docketing Statement, Appellant states he is appealing the 7/31/17 Order granting Defendants' first motion to dismiss.¹ Neither Appellant's 3/16/2020 Notice of Appeal or the Case Appeal Statement refers to the 7/31/17 Order. In any case, this Court cannot consider the 7/31/17 Order because it is time-

¹ See Docketing Statement, p. 2.

barred. Rule 3(a) of the Nevada Rules of Appellate Procedure directs that, “... an appeal permitted by law from a district court may be taken **only** by filing a notice of appeal with the district court clerk **within the time allowed by Rule 4.**” (Emphasis added.) Rule 4(a)(1) provides, in relevant part:

Except as provided in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and **no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.**

(Emphasis added.) The 30-day timing rules under Rules 3(a) and 4(a)(1) are stated in mandatory terms (e.g. “only” and “must”). Neither allow for tardiness beyond the 30-day deadline.

A Notice of Entry of the 7/31/17 Order was served and filed on 8/1/17.² As such, Appellant had to appeal that Order by 8/31/17, but failed to do so. Therefore, the appeal of the 7/31/17 Order is not before this Court, is time-barred and should be dismissed. Respondent, therefore, respectfully requests that this Court dismiss Appellant’s purported appeal of the 7/31/17 Order.

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² See Notice of Entry of Order, attached hereto as Exhibit A.

Appellant's Docketing Statement contains other incorrect information and/or statements, which will be addressed separately by a Response thereto.

DATED this 8th day of May, 2020.

OLSON CANNON GORMLEY
& STOBERSKI

/s/ Felicia Galati

FELICIA GALATI, ESQ.
Nevada Bar No. 7341
9950 W. Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Respondents
GEORGINA STUART and CLARK
COUNTY, NEVADA

CERTIFICATE OF SERVICE

On the 8th day of May, 2020, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **MOTION TO DISMISS** to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or emailed/mailed:

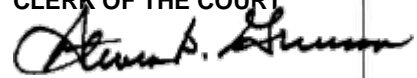
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/s/ Erika Parker

An Employee of Olson Cannon Gormley & Stoberksi

EXHIBIT A



NOTC

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CIVIL DIVISION

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Attorneys for Defendants

Georgina Stuart and Clark County

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON,

Plaintiff,

vs.

GEORGINA STUART; DEPARTMENT OF
FAMILY SERVICES; CHILD SUPPORT
SERVICES; CLARK COUNTY, NEVADA;
LISA CALLAHAN; BRIAN CALLAHAN;
and DOES 1 THROUGH 100, inclusive,

Defendants.

Case No: A-16-748919-C

Dept. No: VIII

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND ORDER GRANTING
CLARK COUNTY AND
GEORGINA STUART'S MOTION
TO DISMISS**

TO: THE ABOVE NAMED PARTIES:

YOU WILL PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law
and Order Granting Clark County and Georgina Stuart's Motion to Dismiss was filed on the
31st day of July, 2017, a copy of which is attached hereto.

DATED this _____ day of August, 2017.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: 

OFELIA L. MONJE

Deputy District Attorney

State Bar No. 11663

500 South Grand Central Pkwy. 5th Flr.

Las Vegas, Nevada 89155-2215

Attorney for Defendants

Clark County and Georgina Stuart

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Brian and Lisa Callahan
300 Ashley Drive
New Lenox IL 60451
Defendants

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DISTRICT COURT

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CLARK COUNTY, NEVADA

4 STEVE EGGLESTON,

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Plaintiff,

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7 vs.

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GEORGINA STUART; DEPARTMENT OF
FAMILY SERVICES; CHILD SUPPORT
SERVICES; CLARK COUNTY, NEVADA;
LISA CALLAHAN; BRIAN CALLAHAN;
and DOES 1 THROUGH 100, inclusive,

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Defendants.

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING
CLARK COUNTY AND GEORGINA STUART'S MOTION TO DISMISS**

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Defendants CLARK COUNTY and GEORGINA STUART's Motion to Dismiss
having come before the Court on July 11, 2017. Ofelia L. Monje, Esq. appeared for
Defendants CLARK COUNTY and GEORGINA STUART. Plaintiff STEVE
EGGLESTON appeared on his behalf, pro per, telephonically. No other party appeared.
The Parties submitted on their written pleadings not offering any additional oral
argument at the hearing.

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The Court, having considered the papers filed pertaining to the motion, not
hearing any additional argument from the parties, and being otherwise fully advised in
the premises, hereby finds the following facts and makes the following conclusions of
law:

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FINDINGS OF FACT

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1. On December 30, 2016, Plaintiff Eggleston filed the instant Complaint alleging
the following causes of action: 1) A Civil Rights Violation pursuant to 42 USC § 1982,
only against the Clark County Defendants and unknown Doe Defendants; 2) A Civil
Rights Violation of 42 USC § 1982 based on Conspiracy and/or Aiding and Abetting,
against all named Defendants and unknown Doe Defendants; 3) Intentional Infliction of
Emotional Distress against all named Defendants and unknown Doe Defendants; and 4)

DOUGLAS E. SMITH
DISTRICT JUDGE

DEPARTMENT EIGHT
LAS VEGAS NV 89155

1 Libel and Slander against all named Defendants (except Brian Callahan) and unknown
2 Doe Defendants.

3 2. The allegations in the complaint involve interactions between Plaintiff and
4 Defendants in late December 2014 to early January 2015.

5 3. In or about December 2014, the Department of Family Services became involved
6 with the Rodriguez-Eggleston family due to the mother, Laura Battistella, having
7 suicidal ideations and having been placed in a mental health facility. Compl. ¶ 7-8, 10.
8 Defendant Lisa Callahan arrived from out-of-state to be with the family over the
9 holidays. Compl. ¶ 20. On January 6, 2015, according to Plaintiff Eggleston, in lieu of
10 having the children removed from the home, Plaintiff Eggleston and Laura Battistella
11 consented to a temporary guardianship of the children in question. Compl. ¶ 26, 26(b),
12 26(i). Subsequently, Defendant Lisa Callahan filed a guardianship action in Illinois.
13 Compl. ¶ 26(s).

14 4. Defendants CLARK COUNTY and GEORGINA STUART were served with
15 Plaintiff's COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, CHILD ABDUCTION,
16 CONSPIRACY, DEFAMATION on April 25, 2017.

17 5. Defendants CLARK COUNTY and GEORGINA STUART filed the instant
18 Motion to Dismiss on June 9, 2017.

19 6. Plaintiff STEVE EGGLESTON filed an Opposition to Motion to Dismiss of
20 Defendants Clark County and Georgina Stuart on June 19, 2017.

21 7. Defendants CLARK COUNTY and GEORGINA STUART filed a Reply to
22 Plaintiff's Opposition to Defendants Clark County and Stuart's Motion to Dismiss.

23 CONCLUSIONS OF LAW

24 1. In lieu of filing an answer to a complaint, NRCP 12(b)(5) permits a defendant to
25 file a motion to dismiss for failure to state a claim upon which relief may granted. A
26 motion to dismiss under the rule should be granted where it "appears beyond a doubt
27 that the plaintiff could prove no set of facts which, if accepted by the trier of fact,
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1 would entitle him or her to relief.” Blackjack Bonding v. City of Las Vegas Mun.
2 Court, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000), quoting Simpson v. Mars Inc.,
3 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). Every fair inference must be drawn in
4 favor of the plaintiff. Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 873, 8
5 P.3d 837, 839 (2000).

7 2. The Court “must construe the pleadings liberally and accept all factual
8 allegations in the complaint as true.” Blackjack Bonding at 1213, 14 P.3d at 1278.
9 The Court’s “task is to determine whether . . . the challenged pleading sets forth
10 allegations sufficient to make out the elements of a right to relief.” Vacation Village,
11 Inc. v. Hitachi American, Ltd., 110 Nev. 481, 874 P.2d 744 (1994), quoting Edgar v.
12 Wagner, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985). The Vacation Village Court
13 stated the following test:

14 The test for determining whether the allegations of a
15 complaint are sufficient to assert a claim for relief is
16 whether the allegations give fair notice of the nature and
17 basis of a legally sufficient claim and the relief requested.
18 Id.

19 3. The State of Nevada waived its immunity from suit and liability by enacting
20 Nevada Revised Statute 41.031, subject to various exceptions. The State of Nevada has
21 further waived immunity for its political subdivisions in NRS 41.031, as well. The
22 State of Nevada has not, however, waived immunity on behalf of its departments of
23 political subdivisions. See NRS 41.031; see also Wayment v. Holmes, 112 Nev. 232,
24 238, 912 P.2d 816, 819 (1996). Therefore, a department of a political subdivision has
25 not been conferred the power to sue and be sued. Id. at 238, 912 P.2d at 819.

26 4. The Nevada Supreme Court case of Bloom v. Southern Nevada Memorial
27 Hospital specifically established that a department of Clark County was not a legal
28 entity subject to suit. 70 Nev. 533, 275 P.2d 885 (1954). In the Bloom case, the Court
held that the establishment of a department does not create a corporation, but merely

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2 authorizes the respective county to organize its public services; it did not provide that
3 such a department might have the authority to sue or be sued. 70 Nev. at 534-35, 275
4 P.2d at 886; see also McKay v. Washoe General Hospital, 55 Nev. 336, 33 P.2d 755
5 (1934).

6 5. Absent statutory authority, Clark County has not waived immunity on behalf of
7 its individual departments. This Court finds that the individual Clark County
8 Department(s) of Family Services and Child Support Services must be dismissed from
9 the Complaint.

10 6. To state a claim for conspiracy under § 1983, a plaintiff must allege an
11 agreement or meeting of the minds to violate constitutional rights. See, e.g., Mendocino
12 Envtl. Ctr. v. Mendocino County, 192 F.3d 1283, 1301 (9th Cir. 1999). The defendants
13 must have intended to accomplish, by some concerted action, an unlawful objective for
14 the purpose of harming another, which results in damage. Id.

15 7. To be liable, each participant need not know the exact details of the plan, but
16 must at least share in the common objective of the plan. Id. (citing United Steelworkers
17 of America v. Phelps Dodge Corp., 865 F.2d 1539, 1540 (9th Cir. 1989)).

18 8. To state a claim for a conspiracy to violate one's constitutional rights under §
19 1983, a "plaintiff must state specific facts to support the existence of the claimed
20 conspiracy." Burns v. County of King, 883 F.2d 819, 821 (9th Cir. 1989).

21 9. Pursuant to NRCP Rule 8(a), Nevada is a notice-pleading jurisdiction. Chavez v.
22 Robberson Steel Co., 94 Nev. 597, 599, 584 P.2d 159, 160 (1978). Accordingly, Nevada
23 courts liberally construe pleadings to place into issue matter which is fairly noticed to
24 the adverse party. Id.

25 10. In assuring the adverse party has adequate notice of the nature of the claim for
26 relief sought, a complaint must set forth sufficient facts to establish all necessary
27 elements of a claim for relief. Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)
28 (citing Johnson v. Travelers Ins. Co., 89 Nev. 467, 472, 515 P.2d 68, 71 (1973); Branda

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2 v. Sanford, 97 Nev. 643, 648, 637 P.2d 1223, 1227 (1981)). Therefore, the purpose of a
3 complaint under notice pleading statutes is to provide the adverse party adequate notice
4 of the nature of the claim and relief sought. Id.

5 11. The Court dismisses the Second Cause of Action in its entirety and grants leave
6 for Plaintiff Eggleston to amend the Complaint pursuant to NRCP 15(a) to adequately
7 plead his Second Cause of Action.

8 12. A party is prevented from making claims related to remedies for a non-
9 party. Such allegations related to a non-party cannot support a requested remedy. See,
10 generally NRS 12.080.

11 13. Plaintiff Eggleston must strike from his complaint allegations related to
12 his minor children's damages as they are not parties to action.

13 14. Punitive damages cannot be imposed against Defendant Clark County
14 since it is well-settled that a municipality is immune from punitive damages. City of
15 Newport v. Fact Concerts, Inc., 453 U.S. 247, 267, 101 S. Ct. 2748 (1981).

16 15. Defendant Clark County is also immune from punitive damages with
17 respect to the Plaintiff's state law claims as well pursuant to N.R.S. 41.035(1).

18 16. Further, "[a] suit against a governmental officer in his official capacity is
19 equivalent to a suit against the governmental entity itself." Larez v. City of Los
20 Angeles, 946 F.2d 630, 646 (9th Cir. 1991). Because a suit against Defendant Stuart in
21 her official capacity is essentially a suit against Clark County itself, Defendant Stuart, as
22 sued in her official capacity is immune from an award of punitive damages. Id.; see
23 Mitchell v. Dupnik, 75 F.3d 517, 527 (9th Cir. 1996). Further, if Defendant Stuart was
24 acting within the course and scope of her employment at Clark County, damages are
25 limited to \$100,000.00 as to the Plaintiff's state tort claims pursuant to NRS 41.035(1).

26 17. Because Plaintiff's Complaint alleges that Defendant GEORGINA
27 STUART was acting in the course and scope of her employment with the exception of
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2 "certain occasions" not pleaded in the Complaint, Defendant GEORGINA STUART is
3 immune from punitive damages.

4 **ORDER**

5 WHEREFORE, pursuant to the Court's Findings of Fact and Conclusions of
6 Law, the Court hereby ORDERS as follows:

- 7 1. Defendants Clark County and Georgina Stuart's Motion to Dismiss is
8 GRANTED.
9 2. Plaintiff Eggleston will file a First Amended Complaint consistent with this
10 order:
11 a. This Court dismisses the individual Clark County Department(s) of
12 Family Services and Child Support Services.
13 b. The Court dismisses the Second Cause of Action in its entirety and grants
14 leave for Plaintiff Eggleston to amend the Complaint pursuant to NRCP
15 15(a) to adequately plead his Second Cause of Action.
16 c. This Court orders that Plaintiff EGGLESTON must strike from his
17 complaint allegations related to his minor children's damages as they are
18 not parties to action.
19 d. This Court dismisses punitive damages as to Defendants Clark County
20 and Georgina Stuart.
21 3. Plaintiff Eggleston shall have ten (10) days from the filing of the Notice of Entry
22 of Order to file a First Amended Complaint.
23 4. Defendants shall have ten (10) days from the filing of the First Amended
24 Complaint to file an Answer.

25 IT IS SO ORDERED this 31 day of July, 2017.

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28 District Judge Ba