

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN ODELL LANGFORD,
Appellant,
vs.
BARBARA K. CEGAVSKE,
Respondent.

No. 82590

FILED

APR 02 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF RECORD AND REGARDING
PRO BONO COUNSEL*

This is a pro se appeal from a district court order granting a motion to dismiss. This court concludes that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. 27CV-OTH-2019-0046. See NRAP 11(a)(2) (providing that the complete “record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court,” as well as “any previously prepared transcripts of the proceedings in the district court”). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

This court has also determined that the appointment of pro bono counsel to represent appellant would assist this court in reviewing this appeal. By this order, the court expresses no opinion as to the merits of this appeal.

Pro bono counsel is an attorney who provides legal services without charge for the benefit of the public good. The appointment of pro bono counsel provides attorneys with an opportunity to volunteer legal services in furtherance of their professional responsibility and, at the same

time, allows financially eligible litigants access to quality legal representation without cost. Counsel will be appointed for purposes of this appeal only and will participate in oral argument. Currently, the Pro Bono Committee of the Appellate Litigation Section of the State Bar of Nevada (Pro Bono Committee), in conjunction with the Legal Aid Center of Southern Nevada, has developed a pro bono appellate program to assist the public and this court. This case is hereby referred to the program established by the Pro Bono Committee to evaluate whether appellant can benefit from the program.

Accordingly, the clerk of this court is directed to transmit a copy of this order and the attached district court order and case summary to the Legal Aid Center of Southern Nevada for financial eligibility screening. If appellant qualifies and does not object to pro bono counsel, the Legal Aid Center in cooperation with the Pro Bono Committee shall locate a volunteer attorney from the program to represent appellant. Once an attorney is located, the attorney shall file a notice of appearance in this court within 60 days from the date of this order. Briefing and oral argument will be scheduled thereafter. Alternatively, if appellant is not financially eligible or objects to pro bono representation, or if a volunteer attorney cannot be located, the Legal Aid Center of Southern Nevada shall notify this court in writing within 60 days from the date of this order. In such case, oral argument will not be held. The deadlines for filing documents in this appeal shall be suspended pending further order of this court.

It is so ORDERED.

Handwritten Signature, C.J.

cc: Justin Odell Langford
Attorney General/Carson City
Attorney General/Las Vegas
Legal Aid Center of Southern Nevada, Barbara E. Buckley,
Executive Director
Anne R. Traum, Coordinator, Appellate Litigation Section,
Pro Bono Committee, State Bar of Nevada
Kelly Dove
Clerk of the Court/Court Administrator

Docket No. 82590

Langford v. Cegavske

This is an appeal from a district court order granting defendant's motion to dismiss. Justin Langford is an inmate in Lovelock Correction Center. He requested for Nevada Secretary of State Barbara Cegavske to provide Senate Bill No. 2 (1957) and after he was instructed to contact the Legislative Counsel Bureau, filed a complaint alleging a violation of Secretary Cegavske's oath of office for the records of office not in her possession. He sought an injunctive order and punitive damages in the amount of \$1,750,000. The district court found that Langford lacked standing, failed to properly serve the complaint, and failed to state a claim upon which relief could be granted, and granted defendant's motion to dismiss.

1 CASE NO. 27CV-OTH-2019-0046

2 DEPT. NO. I

3 Affirmation pursuant to NRS 239B.030

4 The undersigned affirms that this
5 document does not contain the
6 personal information of any person

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

8 **IN AND FOR THE COUNTY OF PERSHING**

9 JUSTIN ODELL LANGFORD,

10 Plaintiff,

11 vs.

12 BARBARA K. CEGAVASKE, et al.,

13 Defendants.

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

14 The Court has before it Defendant's, Barbara K. Cegavaske (Secretary Cegavaske), Motion to
15 Dismiss Plaintiff's Complaint. For reasons set forth below, the Court will grant Secretary Cegavaske's
16 motion.

17 Justin Odell Langford (Langford) is an inmate currently incarcerated within the Nevada
18 Department of Corrections (NDOC) at Lovelock Correctional Center (LCC). On or about April 2, 2019,
19 Langford submitted his Complaint in this Court, alleging "violation of [Secretary of State Cegavske's] oath
20 of office . . . for the records of office not in her possession." See Compl. at 3. His First Amended
21 Complaint is similar. See First Amended Complaint at 2.

22 Langford alleges Secretary of State Cegavske is the "constitutional record keeper" for the State of
23 Nevada. See *id.* at 4. The Nevada Constitution has a procedure for amendment, but that procedure has not
24 been followed. See *id.* Secretary of State Cegavske "has no copies of the senate bills that have been
25 passed since the creation of the State, [she] tells you to contact the Legislative Counsel Bureau for the
26 requested records." See *id.* Langford alleges he tried "to obtain a copy of Senate Bill No. 2 (1957)[,]" but
27 Secretary of State Cegavske's office sent him a letter explaining that he should contact the Legislative
28 Counsel Bureau. See *id.*; see also *id.* at 16.

1 Langford requests relief in the form of "punitive damages in total of \$1,750,000[.]" and injunctive
2 relief ordering Secretary of Cegavske to "come in compliance with her oath of office," *See id.* at 8.

3 Secretary Cegavaske filed a Motion to Dismiss, alleging Langford lacks standing, has not properly
4 served the complaint and has failed to state a claim, upon which relief can be granted. Langford filed an
5 opposition to the motion, and Secretary Cevavaske replied. The Motion is properly before the Court.

6 A pleading is subject to certain rules; primary among them is that a plaintiff's complaint must
7 adhere to NRCP 8(a). NRCP 8(a) provides:

8 A pleading which sets forth a claim for relief [. . .] shall contain (1) a short
9 and plain statement of the claim showing that the pleader is entitled to relief;
10 and (2) a demand for judgment for the relief the pleader seeks. Relief in the
alternative or of several different types may be demanded.

11 NRCP 8(a). Nevada follows a notice pleading standard as to Rule 8(a) and the sufficiency of the
12 complaint. *See Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979) ("[T]he pleading of [a]
13 conclusion, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and
14 basis of the claim.").

15 "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction
16 of the subject matter, the court *shall* dismiss the action." NRCP 12(h)(3) (emphasis added). *Cf.* NRCP
17 12(b)(1) (regarding motions to dismiss for "lack of jurisdiction over the subject matter"); *Mainor v.*
18 *Nault*, 120 Nev. 750, 761 n.9, 101 P.3d 308, 315 n.9 (2004) (citing *Swan v. Swan*, 106 Nev. 464, 469,
19 796 P.2d 221, 224 (1990)) ("Lack of subject matter jurisdiction can be raised at any time during the
20 proceedings and is not waivable.").

21 NRCP 12(b)(5) provides that a defendant may move to dismiss a claim in any pleading for "failure
22 to state a claim upon which relief can be granted[.]" In reviewing such a motion, "[a]ll factual allegations
23 of the complaint must be accepted as true." *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967
24 (1997). "A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt
25 that plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to
26 relief." *Id.* In this matter, it appears, beyond a doubt, Langford cannot prove any facts that would entitle
27 him to relief.

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1 A justiciable issue is one that must be capable of or ripe for a judicial determination. *See Doe v.*
2 *Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986) (internal citation omitted). If a court has no power
3 to grant relief, or the party seeking relief has no legal right to such relief, any ruling on the issue
4 becomes legally void as an advisory opinion. *See State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269–
5 70, 679 P.2d 1273, 1274–75 (1984) (internal citations omitted).

6 Nevada courts require litigated matters to present “an existing controversy, not merely the
7 prospect of a future problem.” *See Bryan*, 102 Nev. at 525, 728 P.2d at 444. The “irreducible
8 constitutional minimum” of standing is an “injury in fact” that is not merely conjectural or hypothetical,
9 and which must be “likely” as opposed to merely speculative. *See Miller v. Ignacio*, 112 Nev. 930, 936
10 n.4, 921 P.2d 882, 885 n.4 (1996) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

11 In this case, Langford fails to allege any injury he suffered as a result of not being provided
12 records. *See First Amended Compl.* at 3–4. Langford asserts “a violation of a criminal defendant[']s
13 due process rights[,]” but fails to explain how his specific rights were violated or how he was injured.
14 *See id.* at 3. Langford’s allegations of injury are non-existent, let alone conjectural or hypothetical. He
15 argues the Secretary is not doing her job, but fails to allege or show personal injury. *See Miller*, 112
16 Nev. at 936 n.4, 921 P.2d at 885 n.4 (requiring an injury to be more than conjectural or hypothetical to
17 maintain standing). Therefore, Langford is not entitled to proceed with this matter.

18 Nevada is a notice-pleading state, but to meet the bare requirements of notice pleading, a
19 plaintiff must “set forth sufficient facts to demonstrate the necessary elements of a claim for relief so
20 that the defending party has adequate notice of the nature of the claim and relief sought.” *Western*
21 *States Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

22 Here, Langford alleges Secretary of State Cegavske failed to maintain or produce “copies of
23 senate bills that have been passed since the creation of the State,” which he asserts is “in violation of
24 her oath of office[.]” *See First Amended Compl.* at 3–4. However, none of Langford’s citations to the
25 Nevada Constitution provide a private right of action that would allow him to sustain a cognizable
26 claim. *See id.* The Nevada Constitution provides that the Secretary of State “shall keep a true record of
27 the Official Acts of the Legislative and Executive Departments of the Government,” but does not create
28 any claim for a private citizen to sue upon. *See NEV. CONST.* art. V, § 20. The Nevada Supreme Court

1 has held that a private right of action must be based upon clear statutory (or constitutional) language, in
2 the absence of any known legislative intent. *See Neville v. Eighth Judicial Dist. Court*, 406 P.3d 499,
3 502-03 (Nev. 2017) (internal citation omitted).

4 Langford's additional citations are likewise vague and unavailing, and he fails to set forth the
5 basic facts necessary to sustain any known claim for relief. *See Compl.* at 4. Langford did not provide a
6 private right of action to sue Secretary Cegavaske in his opposition to the Motion to Dismiss. He
7 argues that he is making his claims under the authority of 42 U.S.C. Section 1983. However, his claim
8 is based upon his allegations that Secretary Cegavaske violated her oath of office by failing to maintain
9 copies of various legislative bills. There is no private right of action to make such claims. Therefore,
10 Langford's Amended Complaint must be dismissed.

11 Based on the above, it is:

12 HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss
13 Plaintiff's Amended Complaint is GRANTED.

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24 Submitted by:
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25 Attorney General
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**ELEVENTH JUDICIAL
DISTRICT COURT**



Eleventh Judicial District Court

Case Title: JUSTIN ODELL LANGFORD -VS- BARBARA K. CEGAVSKE
Case Number: 27CV-OTH-2019-0046
Type: Order

It is so Ordered.

A handwritten signature in cursive script, appearing to read "J. Shirley", is written in black ink.

Judge Shirley