

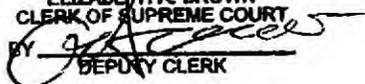
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN PHILLIP BONHAM,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
CORRECTIONS; CHARLES DANIELS;
TIM GARRETT; AND CARTER
POTTER,
Respondents.

No. 83458-COA

FILED

MAR 17 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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

Bryan Phillip Bonham appeals from a district court order granting summary judgment in a civil rights action. Eighth Judicial District Court, Clark County; David Barker, Senior Judge.

Bonham is an inmate in the Nevada Department of Corrections (NDOC). On January 8, 2020, Bonham's mother deposited \$150 into his inmate account. The same day, NDOC made several deductions from Bonham's inmate account for costs it incurred on his behalf for preparing photocopies and providing postage in connection with his litigation activities. Bonham then sued respondents the State of Nevada, NDOC, Charles Daniels, Tim Garrett, and Carter Potter, the last three of whom are NDOC officials and employees. In his complaint, Bonham alleged that the total amount that NDOC deducted from his inmate account for the

photocopying and postage costs—\$84—exceeded the amount that it was authorized to deduct based on the \$150 deposit that his mother made. In particular, Bonham alleged that the combined \$84 deduction violated NRS 209.246 and AR 258 because it exceeded 50 percent of the \$150 deposit. Moreover, insofar as a portion of the deduction was unauthorized, Bonham asserted that respondents deprived him of his constitutionally protected property interest in the funds in his inmate account and were therefore liable under 42 U.S.C. § 1983. Based on these allegations, Bonham sought, among other things, compensatory and punitive damages and an injunction requiring NDOC to return the funds that were deducted from his inmate account.

Respondents eventually filed a motion for summary judgment, which construed Bonham's complaint as presenting only claims under § 1983 for violation of the Fourth Amendment, the Takings Clause of the Fifth Amendment, and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In their motion, respondents maintained that they were entitled to summary judgment for several reasons, including that they were not proper parties to his § 1983 claims. In particular, respondents argued that the State of Nevada and NDOC were not persons for purposes of § 1983 and that Daniels, Garrett, and Potter did not personally participate in deducting funds from Bonham's inmate account. Over Bonham's opposition, the district court agreed with respondents and granted summary judgment. This appeal followed.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026,

1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

On appeal, Bonham challenges the summary judgment on his § 1983 claims by arguing that the unauthorized portion of the deduction from his inmate account deprived him of a constitutionally protected property interest in the funds in his account. We need not reach this issue, however, as the district court correctly concluded that respondents are not proper parties for purposes of Bonham's § 1983 claims. Indeed, the State of Nevada and NDOC are not persons for purposes of a § 1983 claim. *See* § 1983 (allowing a plaintiff to bring a civil rights claim against any person who deprives the plaintiff of rights, privileges, or immunities secured by the United States Constitution); *see also Craig v. Donnelly*, 135 Nev. 37, 40, 439 P.3d 413, 415-16 (Ct. App. 2019) (recognizing, based on established precedent, that states and state agencies are not "persons" within the meaning of § 1983).

Moreover, the affidavits submitted with respondents' motion for summary judgment demonstrated that Daniels, Garrett, and Potter were not involved in managing the funds in Bonham's inmate account. *See Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002) (stating that, "to be liable under section 1983 there must be a showing of personal participation in the

alleged rights deprivation”). And to the extent Bonham’s informal brief can be read to challenge the district court’s rejection of his argument that Daniels, Garrett, and Potter personally participated in the alleged violation of his constitutional rights by denying his grievances or otherwise failing to act despite being aware of the allegedly unauthorized deduction, this type of conduct is insufficient by itself to establish personal participation, *see Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999) (stating the same), and Bonham did not otherwise present any evidence to show how these respondents caused the alleged constitutional violations through their own individual actions. *See Gates v. Legrand*, No. 316-cv-00321-MMD-CLB, 2020 WL 3867200, at *5 (D. Nev. March 27, 2020) (surveying caselaw involving § 1983 claims based on the denial of a grievance and identifying the circumstances that must exist for personal participation to be established). Thus, because respondents were not proper parties for purposes of § 1983, Bonham’s § 1983 claims fail as a matter of law, and the district court did not err in granting respondents summary judgment on those claims. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, we affirm the district court’s summary judgment on Bonham’s § 1983 claims.

This does not end our analysis, however, because federal due process jurisprudence regarding unauthorized deprivations of inmate property suggests that Bonham could arguably seek relief by bringing state-law-based claims against respondents. In the federal due process context, the core question is typically whether an inmate has a meaningful postdeprivation remedy for an unauthorized deprivation of property. *Compare Hudson v. Palmer*, 468 U.S. 517, 531-33 (1984) (explaining that a

negligent or intentional unauthorized deprivation of property does not offend the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy is available since predeprivation process is impracticable in the context of random unauthorized conduct), *with Piatt v. MacDougall*, 773 F.2d 1032, 1036-37 (9th Cir. 1985) (declining to treat a postdeprivation remedy as adequate where a deprivation in violation of a statute was nevertheless the result of deliberate and considered conduct, which had routinely occurred in the prison system, such that it could not be said to be random). And on that point, courts routinely conclude that a meaningful postdeprivation remedy exists for the unauthorized deprivation of inmate property in the form of state civil actions. *See, e.g., Hawes v. Stephens*, 964 F.3d 412, 418 (5th Cir. 2020) (“We have long acknowledged that Texas provides inmates challenging the appropriation of monies in their inmate trust fund account with meaningful postdeprivation remedies, either through statute or through the tort of conversion.” (internal quotation marks omitted)); *Wright v. Riveland*, 219 F.3d 905, 917-18 (9th Cir.) (reasoning that, if a deduction from an inmate account exceeds the statutorily authorized amount, an inmate has an adequate postdeprivation remedy through established prison grievance procedures or a state tort claim).

As in the cases discussed above, state law claims against respondents were arguably available to allow Bonham to challenge the purportedly unauthorized deductions from his account, given that Nevada has waived its sovereign immunity, *see* NRS 41.031(1), and authorized inmates who have exhausted their administrative remedies to bring claims

against NDOC and “its agents, former officers, employees or contractors to recover for the loss of . . . personal property,” NRS 41.0322(1). While we recognize that Bonham’s complaint was largely couched in terms of his constitutional claims, it nevertheless seemingly implicated state law.

Indeed, in his complaint, Bonham provided factual allegations concerning his mother’s \$150 deposit and the deductions that followed, asserted that a portion of the deductions exceeded the amount that could properly be deducted from his account under AR 258 based on the deposit, indicated that the money was not returned to him after he exhausted his administrative remedies,¹ and requested an order directing that certain funds be returned to his account. However, based on the order granting respondents’ motion for summary judgment, it does not appear that the district court considered whether the foregoing was sufficient to present state law claims under Nevada’s notice pleading standard, *see Droge v. AAAA Two Star Towing, Inc.*, 136 Nev. 291, 308-09, 468 P.3d 862, 878 (Ct. App. 2020) (recognizing that a complaint satisfies Nevada’s notice pleading standard if it sets forth facts that support a claim even if the plaintiff does not “use the precise legalese in describing his grievance” (internal quotation marks omitted)), much less whether there was evidence in the record to support such claims. As a result, we must reverse this matter in part and

¹Respondents did not dispute Bonham’s allegation that he exhausted his administrative remedies or otherwise seek dismissal based on an assertion that this allegation was not correct.

remand this case for the district court to address this issue in the first instance.²

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²While this court generally will not grant a pro se appellant relief without providing the respondent an opportunity to respond, NRAP 46A(c), a response here would be futile since it does not appear that the district court considered whether Bonham's complaint presented a state law claim, and respondents did not address the issues during the underlying proceeding.

³In light of our disposition of this appeal, we take no action with respect to the "notice to the court," which was filed on March 7, 2022. Nevertheless, nothing in our disposition of this appeal prevents Bonham from raising the issues presented in the notice on remand.

Insofar as Bonham raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Chief Judge, Eighth Judicial District Court
Hon. David Barker, Senior Judge
Bryan Phillip Bonham
Attorney General/Carson City
Eighth District Court Clerk