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Harris v. State, 138 Nev. Adv. Op. 40 (June 2, 2022)

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CIVIL RIGHTS: PROCEDURAL NUANCE IS NOT INTENDED TO ACT AS A SHIELD FOR STATE ACTORS FROM LIABILITY FOR VIOLATIONS UNDER 42 U.S.C. §1983.

Summary

The Nevada Supreme Court considered whether the district court erroneously dismissed the rights deprivation claims of the appellant, an incarcerated individual, on procedural grounds. The Court held that the lower court erred in dismissing the appellant's claims with prejudice under NRCP 12(b)(5) when he had pleaded facts sufficient to place the respondents on notice of the nature of the claim and relief sought, in accordance with Nevada's notice-pleading standard. The Court also held that the lower court erred in dismissing the appellant's complaint with prejudice, without granting leave to amend to resolve the deficiencies in service, and without an explanation for doing so.

Facts and Procedural History

The appellant is an inmate housed within the Nevada Department of Corrections. Over the course of several months, he expressed concerns about worsening chest pain to the warden, several officers, and numerous members of the medical staff, to no avail. The appellant alleged that despite his verbal complaints and several employees witnessing his worsening condition, he was told to file grievances that would essentially go unanswered as he was continually denied medical care and shown a deliberate indifference toward his serious medical condition. In November 2019, the appellant, filing pro-se, brought a 1983 claim against several prison representatives, alleging a violation of his 8th Amendment right to adequate medical care.

The warden challenged the sufficiency of the appellant's complaint and moved to have it dismissed on procedural grounds. First, he insisted that the appellant failed to plead facts to establish a violation of his constitutional rights and to show direct participation if such a violation did exist. The additional respondents moved for dismissal due to inadequacies in service of the complaint. Despite acknowledging the appellant's attempt to effectuate service, the court granted each of the motions and dismissed the appellant's complaint with prejudice and without an explanation as to why the appellant was not granted leave to amend his complaint to remedy deficiencies.

The appellant appealed.

Discussion

Harris properly pleaded a § 1983 claim against Williams

¹ By Candace Mays.

The questions before the Supreme Court were (1) whether the lower court erred in dismissing the complaint with prejudice for failure to state a claim, and (2) if the inadequacies in the service of the complaint constituted a dismissal with prejudice as well.

The Court, reviewing the decision de novo², determined appellant's complaint alleged sufficient facts to withstand a motion to dismiss under NRC 12(b)(5).³ The warden argued that Harris' claims of chest pain did not automatically constitute a serious medical need and therefore, any inattention alleged by the appellant did not rise to the level of deliberate indifference. The Warden also argued that there was no direct connection between himself and the appellant's injury. The Court rejected these assertions.

The Court noted that a Plaintiff fails to state a claim if, and only if, viewed in the light most favorable to Plaintiff, the facts would not support entitlement to relief.⁴ The Court expressly noted that the jurisdiction had not adopted a more-relaxed pro-se pleading standard but clarified that Nevada's notice-pleading standard does not require more than for a complainant to plead facts sufficient to put on the respondent on notice of the nature of the claim and the relief sought.⁵

To the warden's argument that the appellant failed to show direct participation in the "deliberate indifference" alleged, the Court clarified the standard. The Court noted that under the 8th Amendment, deliberate indifference involves both a subjective and an objective component.⁶ The Court used the test for the subjective component was articulated in *Farmer v. Brennan*⁷ which requires that "the official knows of and disregards an excessive risk to [the] inmate[s] health"⁸.

The objective component, as articulated in *Snow v. McDaniel*⁹ is satisfied when "the risk to the inmate qualifies as sufficiently serious to warrant treatment, or in other words, sufficiently serious to constitute "unnecessary and wanton infliction of pain" in the absence of such treatment."¹⁰

The Court found that the complaint alleged facts sufficient to show deliberate indifference by alleging that the warden received the appellant's complaints and failed to take any action despite having a legal obligation to do so. The proper conduct was governed by the NDOC's administrative regulation which requires a warden to review, investigate, and respond to inmate first-level grievances. Each of Harris' complaints went uninvestigated and unanswered.

² The Court cited *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) as setting the applicable standard of review.

³ N.R.C.P. 12(b)(5) allows for dismissal of a claim if the pleading fails to state a claim for which relief may be granted.

⁴ *Buzz Stew*, 124 Nev. at 228, 181 P. 3d at 672.

⁵ The Notice-Pleading Standard comes from *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

⁶ *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994).

⁷ *Id.*

⁸ *Id.*

⁹ *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012) (citation omitted).

¹⁰ *Id.*

The Complaint alleged that his condition got worst after having his complaints of chest pain ignored or undermined. Despite being observed falling to his knees in pain, becoming bedridden, the warden failed to ensure Harris received proper treatment. This and the doctor's order that Harris appear for a follow-up appointment should have signaled to the staff that the condition was serious and alerted them to the risks associated with failure to receive treatment. Taken together, these facts satisfy the objective component of deliberate indifference. Therefore, once the warden became aware of the concerns voiced in the appellant's grievances, the continued denial of care equates to deliberate indifference, actionable under 42 U.S.C. §1983.

Harris was entitled to additional time under NRCP 4.2(d)(6) to serve the state officials or employees

Reviewing the dismissal for failure to timely serve process under the abuse of discretion standard¹¹, the Court held that Harris was entitled to additional time to serve the respondents in the case with notice. The Court characterized the interplay between NRCP 4(e) and NRCP 4.2(d) as a matter of first impression, so the issue of timely service was discussed in detail in the opinion.

The Court noted that under NRCP 4(e), the extension should be granted liberally where there is good cause to allow a party to cure defects in service. Citing NRCP 4.2(d)(2), they acknowledged the unique hardship that is involved with the dual-service requirement when serving governmental agents.¹² Beyond this, the Court stated that the purpose of the notice requirements is to ensure those required to respond are aware of the allegations against them, and thus, under NRCP 4.2, Harris' fulfillment of at least one service requirement rendered the other less critical. Harris had timely satisfied the service requirements under NRCP 4.2(d)(2)¹³, the parties were constructively on notice, and thus, he was entitled to additional time to cure notice defects pursuant to NRCP 4.2(d)(6)¹⁴. For these reasons, the Court did not sustain the procedural objections of the respondents.

Conclusion

The Court held that the lower court erred in dismissing the appellant's claims with prejudice under NRCP 12(b)(5) when he had pleaded facts sufficient to place the respondents on notice of the nature of the claim and relief sought, in accordance with Nevada's notice-pleading standard. The Court also held that the lower court erred in dismissing the appellant's complaint with prejudice, without granting leave to amend to resolve the deficiencies in service, and without an explanation for doing so.

The case was reversed and remanded for further proceedings consistent with the decision.

¹¹ See Saavedra-Sandoval v. Wal-Mart Stores, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010).

¹² They cite N.R.C.P. 4.2(d)(c) in not requiring a motion for the extension.

¹³ Under this statute, petitioners have 120 days to meet the service requirements as prescribed by NRCP 4(e)(1).

¹⁴ Under NRCP 4.2(d)(6), "the court must allow a party a reasonable time to cure its failure serve a person required to be served if the party has timely served at least one of the other required parties (i.e. the Attorney General or public employee).