

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RAYMOND J. CONROY, *Plaintiff/Appellant*,

v.

MICHAEL E. GOTTFRIED, et al., *Defendants/Appellees*.

No. 1 CA-CV 20-0619
FILED 9-28-2021

Appeal from the Superior Court in Maricopa County
No. CV2020-005845
The Honorable Margaret R. Mahoney, Judge

AFFIRMED

COUNSEL

Raymond J. Conroy, Phoenix
Plaintiff/Appellant

Arizona Attorney General's Office, Phoenix
By Patrick J. Boyle
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maurice Portley joined.¹

T H U M M A, Judge:

¶1 Plaintiff Raymond Conroy challenges the superior court’s dismissal of his claims against defendants Michael E. Gottfried, in his official capacity, and the State of Arizona (collectively, Defendants). Because Plaintiff has shown no error, the dismissal is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 As alleged in the complaint, Plaintiff was in custody in the Arizona Department of Corrections for a time. In September 2019, a librarian where Plaintiff was being held obtained, “as a private citizen NOT as a state employee,” an injunction against harassment (IAH) against Plaintiff. Plaintiff was then transferred to a different facility and requested a hearing on the IAH. At that hearing, an Arizona Assistant Attorney General represented the librarian.

¶3 Plaintiff later sued Defendants, alleging they improperly “authorized . . . an attorney working for the [S]tate to defend and represent a private citizen” at the IAH hearing. Plaintiff claimed that violated Arizona Revised Statute (A.R.S.) § 41-192.02(A) (2021),² which states:

The attorney general in his discretion is authorized to represent a current or former officer or employee of this state against whom a civil action is brought in his individual capacity . . . until such time as it is established as a matter of law that the alleged activity or events which

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to [Article 6, Section 3](#), of the Arizona Constitution.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the officer's or employee's duty or employment.

Asserting the representation of the librarian "misappropriated state funds and employees for personal gain" in violation of this statute, Plaintiff sought money damages, a declaration "that the representation violated state law" and "if possible" an order invalidating the IAH proceeding.

¶4 Defendants moved to dismiss for failure to state a claim. *See* Ariz. R. Civ. P. 12(b)(6). Defendants argued Plaintiff had no private cause of action under A.R.S. § 41-192.02, that he failed to serve a notice of claim as required by A.R.S. § 12-821.01(A) and that his complaint was barred by A.R.S. § 31-201.01(L), which prohibits claims by individuals in custody for injuries sustained in custody "unless the complaint alleges specific facts from which the court may conclude that the plaintiff suffered serious physical injury or the claim is authorized by a federal statute."

¶5 Plaintiff responded that the private cause of action argument "is NOT something ripe for a[] Motion to Dismiss but is for an answer." Plaintiff also stated he had served a notice of claim and argued that A.R.S. § 31-201.01(L) was unconstitutional. Plaintiff later requested oral argument.

¶6 The superior court's minute entry denied Plaintiff's request for oral argument and granted Defendants' motion to dismiss. The court found there was no express or implied cause of action for a violation of A.R.S. § 41-192.02. The court also found A.R.S. § 31-201.01(L) barred Plaintiff's claim and was constitutional. Given these conclusions, the court did not address the notice of claim issue.

¶7 After entry of final judgment, Plaintiff timely appealed. This court has appellate jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

¶8 Plaintiff argues error in dismissing his complaint for failure to state a claim upon which relief can be granted. This court reviews that ruling de novo. *Guminski v. Ariz. State Veterinary Med. Examining Bd.*, 201 Ariz. 180, 182 ¶ 9 (App. 2001).

¶9 Section 41-192.02 does not authorize an express cause of action. Defendants argue that Plaintiff "fail[ed] to develop any argument

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regarding an implied private right of action.” Plaintiff has provided no authority or rationale recognizing such a claim. Plaintiff’s failure to meaningfully argue the point constitutes waiver. *See, e.g., MacMillan v. Schwartz*, 226 Ariz. 584, 591 ¶ 33 (App. 2011) (“Merely mentioning an argument in an appellate opening brief is insufficient.”); *Ace Auto. Prod., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987) (“It is not incumbent upon the court to develop an argument for a party.”). Moreover, Plaintiff’s argument fares no better on the merits.

¶10 In rare circumstances, an implied private cause of action may exist for a claimed statutory violation. Whether such a claim exists is “a matter of statutory construction,” properly resolved through a motion to dismiss by looking at “the context of the statute[], the language used, the subject matter, the effects and consequences, and the spirit and purpose of the law.” *McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 194 ¶ 6 (App. 2014) (quoting *Transamerica Fin. Corp. v. Superior Court*, 158 Ariz. 115, 116 (1988)). Here, that inquiry shows Plaintiff has no implied private cause of action.

¶11 Section 41-190.02 is in Article 5, Chapter 1, of A.R.S. Title 41, describing “The Attorney General and the Department of Law.” The statute is permissive, not mandatory, and does not prohibit the Arizona Attorney General from undertaking any representation. Enacted 50 years ago, 1971 Ariz. Sess. Laws, ch. 82, § 1, Plaintiff cites no authority (and the court has found none) recognizing an implied private cause of action for an alleged violation of Section 41-190.02.

¶12 An implied cause of action under Section 41-190.02 also would appear contrary to Section 41-193, which provides that “when deemed necessary by the attorney general,” the “department of law” may “*prosecute and defend* any proceeding in a state court other than the supreme court in which the state or an officer thereof is a part or has an interest.” (Emphasis added.) An implied cause of action under Section 41-192.02 would negate the broad, discretionary authorization expressed in Section 41-193 allowing the Arizona Attorney General to participate in state court proceedings, such as the IAH proceeding here.

¶13 There also is no “common law history” supporting an implied cause of action for an alleged violation of Section 41-192.02. *McNamara*, 236 Ariz. at 194 ¶ 8. Nor is Plaintiff claiming to be a direct beneficiary of Section 41-192.02. *Cf. McNamara*, 236 Ariz. at 194 ¶¶ 8, 9 (in finding no implied private right of action, noting appellants “have neither alleged nor established that they are members of a class of electors for whose ‘especial

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benefit” the statute “was enacted;” citing *Lancaster v. Ariz. Bd. of Regents*, 143 Ariz. 451, 457 (App. 1984) as showing that even “incidental beneficiaries” of a statute had no implied private right of action).

¶14 For all of these reasons, as in *McNamara*, “[p]rincipled application of tools of statutory construction reveals no legislative intent to establish a private right of action for alleged violations” of Section 41-192.02. 236 Ariz. at 195 ¶ 14. If such a cause of action is to exist, the Legislature would need to expressly authorize such a claim. *Id.* Because it has not done so, and because there is no implied private cause of action under Section 41-192.02, Plaintiff’s complaint fails to state a claim upon which relief may be granted. *Id.*³

CONCLUSION

¶15 The superior court’s order granting Defendants’ motion to dismiss for failure to state a claim is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA

³ Given this resolution, the court need not (and expressly does not) address the applicability of A.R.S. § 31-201.01(L) and Plaintiff’s various arguments about the constitutionality of that statute.