

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES EDWARD HUEBLER,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
STEVEN R. KOSACH, DISTRICT
JUDGE,

Respondents,

and

KERRY ISON, DEPUTY PUBLIC
DEFENDER,
Real Party in Interest.

No. 44436

FILED

SEP 09 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original proper person writ petition challenges a district court order that denied petitioner's motion for leave to file documents in forma pauperis on the basis that his proposed complaint failed to state a claim under NRCP 12(b)(5). We ordered an answer, which has been filed, and we permitted petitioner to file a rebuttal.

In our recent opinion, Jordan v. State, Department of Motor Vehicles,¹ we set forth specific guidelines for the district court when it addresses applications for in forma pauperis status and when the complaint sought to be filed may be without merit:

Nevada's in forma pauperis statute, NRS 12.015, does not authorize the district court to review a complaint (or a petition) for frivolity when considering a litigant's application to proceed

¹121 Nev. ___, 110 P.3d 30 (2005).

without paying court fees and costs. Accordingly, upon receiving a complaint and an application to proceed in forma pauperis, the district court must first consider the application's merits and determine whether the accompanying affidavit and any additional investigation demonstrate that the applicant is unable to pay the costs of proceeding with the action. If the court so finds, the court must grant the applicant leave to proceed without the payment of costs and file the complaint.


Nevertheless, once the complaint is filed, the court is free to review the complaint's merits for apparent defects. If the complaint appears completely frivolous on its face, meaning that it appears to lack "an arguable basis either in law or in fact," then the court may direct the clerk to defer issuing the summons(es) pending the completion of its review. The court may then hold a preliminary evidentiary hearing with the litigant to determine whether the action should be allowed to proceed. If the district court determines that the action or a specific claim is indeed frivolous, the court can dismiss the action or claim, as the case may be, in accordance with NRCPC 11. We emphasize that, although this procedure is constitutionally permissible, the dismissal of a complaint based on information obtained in a Spears-type hearing is an extreme action, and if the complaint can be amended to cure any apparent defects, the litigant should be permitted to do so.²

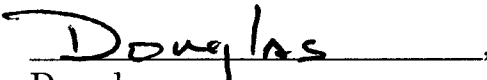
²Id. at ___, 110 P.3d at 40-41 (citing Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985), abrogated in part by Neitzke v. Williams, 490 U.S. 319, 323 (1989), modified in part by statute as recognized in Christiansen v. Clarke, 147 F.3d 655 (8th Cir. 1998); other citations omitted).

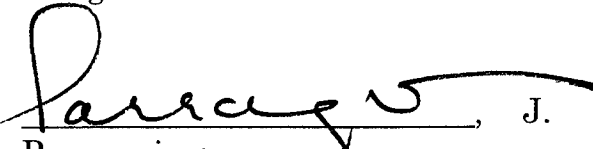
Here, the district court considered the merits of the complaint that petitioner sought to file, summarily declared the complaint to be without basis and then denied petitioner's application to proceed in forma pauperis. We specifically disapproved of this procedure in Jordan.³

Accordingly, we grant the petition and direct the court clerk to issue a writ of mandamus that directs the district court to vacate its December 14, 2004 order denying petitioner's application to proceed in forma pauperis and to reconsider the application in light of Jordan.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Charles Edward Huebler
Washoe County Public Defender
Washoe District Court Clerk

³See id.; see also Sullivan v. District Court, 111 Nev. 1367, 904 P.2d 1039 (1995); Barnes v. District Court, 103 Nev. 679, 748 P.2d 483 (1987).