

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JAMES BENNETT,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS; DR. JOHN SCOTT,
M.D.; AND WARDEN, NEVADA STATE
PRISON, CRAIG FARWELL,
Respondents.

No. 45445

FILED

MAY 23 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a motion for a preliminary injunction. Sixth Judicial District Court, Pershing County; John M. Iroz, Judge.

Appellant Richard James Bennett filed, in the district court, a motion for a preliminary injunction, seeking an order enjoining respondents from treating his knee injury and directing respondents to transport him from a correctional facility to the Nevada Department of Corrections' regional medical facility in order to "treat the injury properly." Bennett's motion also requested appointment of counsel.

The district court denied the motion, finding that respondents had taken prompt and adequate measures to treat Bennett's injury. Specifically the court noted that Bennett had complained of a knee injury, and that same day a nurse bandaged his knee and gave him crutches and

pain medication. The next day respondent, John Scott, M.D., examined Bennett's knee and, after Bennett continued to experience pain, an orthopedic surgeon examined and x-rayed Bennett's knee. The orthopedic surgeon noted that Bennett's condition was improving, that there was no effusion, that his knee moved smoothly with only minimal discomfort, that his knee was likely to heal on its own, and that the x-rays were unremarkable. The orthopedic surgeon recommended continued observation and assignment to a bottom bunk bed.¹ Thus, the court determined that, in light of the immediate treatment rendered, as well as the continuing treatment and the physicians' prognosis, Bennett had failed to demonstrate a reasonable probability of success on the merits of his claims. The court also found that Bennett had failed to show that he had suffered any hardship resulting from respondents' conduct, but that, instead, issuing the injunction would be detrimental to the public interest by allowing an inmate to dictate the particulars of his medical treatment, contravening qualified medical professionals' opinions. The court also denied Bennett's request for appointment of counsel.

"The denial of a preliminary injunction will be reversed only where the district court abused its discretion or based its decision on an

¹Bennett conceded in his motion that prison personnel complied with this recommendation by providing him a bottom bunk.

erroneous legal standard or on clearly erroneous findings of fact.”² For a preliminary injunction to issue, the moving party must demonstrate that he (1) is reasonably likely to succeed on the merits, and (2) would be subject to irreparable harm, for which there is no adequate legal remedy, if the nonmoving party’s conduct continued.³ The district court may also weigh the public interest and the parties’ relative hardships in deciding whether to grant a preliminary injunction.⁴

After considering Bennett’s proper person appeal statement and reviewing the record, we perceive no abuse of discretion in the district court’s decision to deny preliminary injunctive relief. Bennett received immediate and ongoing, adequate medical treatment for his injury. Thus, the district court properly concluded that Bennett had failed to demonstrate that his claims would likely succeed on the merits. The court likewise properly concluded that Bennett had failed to establish the irreparable harm element necessary to support issuing a preliminary injunction; to the contrary, the record reveals that Bennett’s condition was improving as a result of respondents’ treatment. Finally, the court

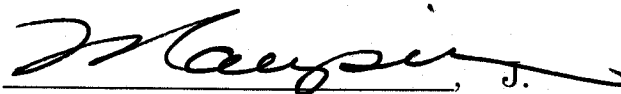
²Attorney General v. NOS Communications, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004) (quoting U.S. v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)).

³State, Dep’t of Conservation v. Foley, 121 Nev. __, __, 109 P.3d 760, 762 (2005).

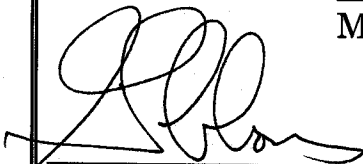
⁴Clark Co. School Dist. v. Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996).

appropriately weighed the public interest and balanced the parties' hardships in concluding that there was no basis for issuing an injunction allowing Bennett to direct his treatment in a manner contrary to medical professionals' opinions.⁵ Accordingly, we affirm the district court's order denying Bennett's motion for a preliminary injunction.⁶

It is so ORDERED.⁷

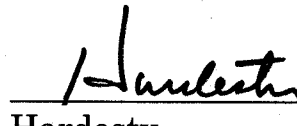


Maupin



Gibbons

J.



Hardesty

J.

⁵See Coppinger v. Townsend, 398 F.2d 392, 394 (10th Cir. 1968) (noting, in the context of a 42 U.S.C. § 1983 claim, that a prisoner's right to medical care does not extend to include the "type or scope of medical care which he personally desires").

⁶To the extent that Bennett challenges the court's denial of his motion for appointed counsel, that decision is not appealable. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (noting that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); NRAP 3A(b) (listing appealable determinations).

⁷Although Bennett filed a proper person transcript request form, it appears from the district court's order and the record that Bennett's motion for a preliminary injunction was submitted and decided on the pleadings, so no hearing was held. Regardless, even if there was a transcribed hearing, review of the transcript is not necessary to resolving this appeal, and thus, Bennett's request for transcripts is denied.

cc: Hon. John M. Iroz, District Judge
Richard James Bennett
Attorney General George Chanos/Carson City
Pershing County Clerk