

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,
Appellant,
vs.
ESP/MEDICAL DEPARTMENT,
Respondent.

No. 46386

FILED

MAY 11 2007

JANET E. M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Felton L. Matthews, Jr.'s petition for a writ of mandamus or prohibition. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

In the district court, Matthews petitioned for a writ of mandamus or prohibition, alleging that he had been denied access to a medical specialist, thus preventing him from filing a medical malpractice action against respondent ESP/Medical Department based on inadequate treatment of his diabetes, and that he was precluded from pursuing a federal action against ESP because federal regulations had made it difficult for him to obtain in forma pauperis status. In terms of relief, Matthews asked the district court to compel ESP to treat his diabetes and to prohibit ESP from retaliating against him.

ESP answered that Matthews' blood sugar level remained normal with the medication that was being provided to him, and that he was not entitled to extraordinary relief, since he had suffered no injury and an adequate remedy at law existed in the form of a malpractice action.

ESP filed medical reports, under seal, demonstrating that Matthews' diabetes was successfully being treated with the provided medication.

Matthews replied with a "Motion for Discovery," attaching an "Offer" in which he indicated that he would accept \$5,560 in damages in lieu of the relief requested in his writ petition. ESP then moved to dismiss the petition, arguing that Matthews had falsely claimed that he was in medical danger, amounting to fraud upon the court.

The district court denied Matthews' petition, concluding that, since Matthews' diabetes was successfully being treated, Matthews had failed to demonstrate that extraordinary relief was warranted. The court also concluded that whether Matthews could bring a malpractice action in state court or litigate in federal court was irrelevant to the requests for relief presented in his writ petition. This appeal followed.

On appeal, Matthews argues that he used a writ petition to challenge ESP's actions because, as an inmate, he does not have access to a medical expert. He contends that the medication provided by ESP is insufficient to treat his diabetes. Matthews asks this court, among other things, to "modify NRS 41A" so that inmates may bring malpractice actions, and to reverse the district court's order denying his writ petition.

ESP responds that this appeal should be dismissed as untimely, and, at any rate, the district court properly denied the petition, since Matthews' disagreement with his treatment does not warrant the requested relief. With regard to Matthews' NRS 41A.071 argument, ESP asserts that it is not proper for consideration in this appeal, since his district court action was not grounded in malpractice and, regardless, prison regulations allow inmates access to outside physicians, so that Matthews is not necessarily prohibited from complying with NRS 41A.071.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise or manifest abuse of discretion.¹ The district court may issue a writ of prohibition to arrest the proceedings of any lower tribunal exercising judicial functions in excess of its jurisdiction.² This court reviews the district court's order denying Matthews' petition for extraordinary relief for an abuse of discretion.³

Upon review of the record and consideration of the parties' appellate arguments, we perceive no abuse of discretion in the district court's order.⁴ In Matthews' petition, he specifically requested a mandate directing ESP to "restore treatment of his diabetes," but he failed to demonstrate that his diabetes was not effectively being treated, and indeed, Matthews acknowledged that his diabetic condition is stabilized. Matthews also requested a writ of "prohibition against any future retaliation by ESP," but he presented nothing to show that ESP had engaged in any retaliatory conduct. Moreover, because Matthews' petition

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


²See NRS 34.320; Koller v. State, 122 Nev. 223, 130 P.3d 353 (2006).

³Stockmeier v. Psychological Review Panel, 122 Nev. 534, 135 P.3d 807 (2006).

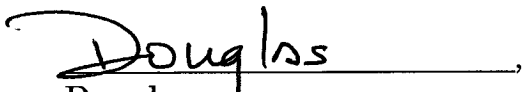
⁴Because it appears that notice of the challenged order's entry was not served, we disagree with ESP's argument that Matthews' notice of appeal was untimely. See Matter of Application of Duong, 118 Nev. 920, 59 P.3d 1210 (2002) (concluding, under NRAP 4(a)(1), that parties must serve separate, written notice of a final order's entry before the thirty-day appeal period begins to run).

was not based on ESP exercising judicial functions in excess or beyond its jurisdiction, prohibition is not an available remedy. Accordingly, we affirm the district court's order denying Matthews' petition for extraordinary relief.⁵

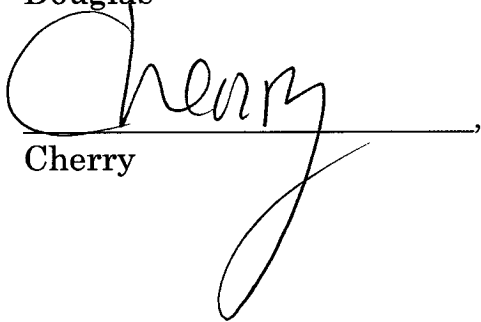
It is so ORDERED.⁶



Gibbons J.



Douglas J.



Cherry J.

⁵As for Matthews' request that this court "modify NRS 41A," we decline to address it, since his petition below did not implicate NRS Chapter 41A, and this appeal is not the appropriate forum within which Matthews may raise concerns about NRS Chapter 41A. See Nev. Const. art. 3, § 1(1) (outlining the separation of powers doctrine); Galloway v. Truesdell, 83 Nev. 13, 422 P.2d 237 (1967) (recognizing that the legislature has the sole power to frame and enact legislation). To the extent that Matthews argues that he was unable to obtain an expert's affidavit, NRS 41A.071's affidavit requirement is inapposite to the issues presented in this appeal, since NRS 41A.071 was not a factor in the district court's decision to deny Matthews' petition for extraordinary relief.

⁶Matthews' requests for damages lack merit and do not warrant further discussion, and his claim that he was unable to initiate a federal cause of action is likewise meritless, as it improperly attempted to seek relief from federal procedural requirements in Nevada state court.

cc: Hon. Steve L. Dobrescu, District Judge
Felton L. Matthews, Jr.
Attorney General Catherine Cortez Masto/Carson City
White Pine County Clerk