

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDT DAVID WHETSTONE,
Appellant,
vs.
WAYNE A. PEDERSON,
Respondent.

No. 47243

FILED

SEP 08 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a final judgment in a legal malpractice case and from an order awarding attorney fees as sanctions. Third Judicial District Court, Lyon County; Norman C. Robison, Senior Judge.


Appellant sued respondent, his court-appointed criminal defense lawyer, for malpractice arising from respondent's failure to file a notice of appeal from appellant's judgment of conviction, as allegedly directed by appellant. The district court granted summary judgment to respondent and denied appellant's cross-motion for summary judgment. The district court also awarded respondent \$5,000 in sanctions against appellant, for filing a frivolous action.


Having reviewed the record and appellant's proper person appeal statement, we conclude that the district court did not err.¹ In

¹See NRCP 12(b)(5); Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (noting that, in determining whether a claim has been stated, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true); Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (stating that, in reviewing an order granting a motion to dismiss, this court's task is to determine whether the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief).

particular, appellant did not assert that he has obtained relief from his conviction, and thus he cannot maintain a legal malpractice action against his criminal defense attorney.² And we perceive no abuse of discretion in the district court's award of sanctions.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

²See Morgano v. Smith, 110 Nev. 1025, 1028-29, 879 P.2d 735, 737-38 (1994) (holding that a legal malpractice action against a criminal defense attorney cannot be maintained unless the plaintiff has obtained appellate or post-conviction relief from the conviction or sentence, or otherwise established innocence of the charges).

³See NRS 18.010(2)(b) (allowing attorney fees when a claim is brought without reasonable ground or to harass the prevailing party and directing the court to “liberally construe” the statute to award fees “in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public”); Edwards v. Emperor’s Garden Rest., 122 Nev. ___, ___, 130 P.3d 1280, 1288 (2006) (noting that a district court’s decision to award attorney fees as sanctions for filing a frivolous claim is reviewed for abuse of discretion and will not be reversed absent a manifest abuse of discretion).

cc: Chief Judge, Third Judicial District
Hon. Norman C. Robison, Senior Judge
Brandt David Whetstone
Lipson, Neilson, Seltzer & Garin, LLC
Lyon County Clerk