

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN PAUL MARKS,
Appellant,
vs.
CLARK COUNTY DETENTION
CENTER,
Respondent.

No. 48858

FILED

JUL 18 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *A. Wasado*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint, pursuant to NRCP 12(b)(5), for failure to state a claim because the respondent is immune from suit. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant's complaint filed in district court contained many deficiencies, including the failure to use the word "negligence" in asserting a tort claim, not alleging the capacity or employment of the officers and physician referred to in the complaint, and the failure to make any allegation about the amount of damages sustained. We determine that the last deficiency concerning an allegation of the damages sustained is

fatal to this appeal and that it is unnecessary to consider the other claims of error.¹

Every civil action for damages must contain an allegation of damages sustained to establish which court system has jurisdiction, justice court or district court. NRS 4.370(1)(b) states that justice court has jurisdiction of all civil claims for money damages that do not exceed \$10,000, and that these claims shall be tried in justice court. Nevada Constitution Article 6, § 6(1), in turn, provides that district courts have jurisdiction in all cases excluded from the original jurisdiction of justice courts, and NRCP 8 states that all complaints in district court must allege damages in excess of \$10,000.² We previously applied a former version of NRS 4.370(1)(b) when we determined that the district court properly dismissed a complaint that did not allege the statutory minimum to vest jurisdiction that court.³

The appellant's complaint alleges that he fell several times in the jail and broke facial bones, but it contains no allegation that the damages sustained were in excess of \$10,000. This deficiency was not

¹See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (indicating that this court may affirm district court decision on grounds different from those on which the district court relied).

²Nevada Constitution, Article 6, § 6(1).

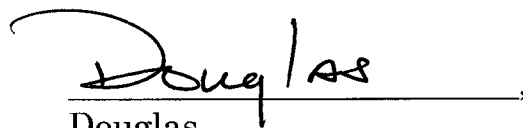
³Royal Ins. v. Eagle Valley Constr. Inc., 110 Nev. 119, 867 P.2d 1146 (1994) (concluding that a complaint did not meet the district court's then \$5,000 jurisdiction threshold).

raised in the proceedings before the district court, but the respondent now raises it on appeal. Generally, a claim not timely made is waived, but claims of lack of subject matter jurisdiction may be made at any time.⁴ The complaint did not vest the district court with jurisdiction to consider this case, and for that reason this appeal must be dismissed.

Accordingly, we affirm the dismissal of this action.

It is so ORDERED.⁵


_____, J.
Gibbons


_____, J.
Douglas


_____, Sr. J.
Rose

⁴Quicksilver Co. v. Thiers, 62 Nev. 382, 152 P.2d 432 (1994); Povenzano v. Long, 64 Nev. 412, 183 P.2d 639 (1947).

⁵The Honorable Robert E. Rose, Senior Justice, participated in the decision of this matter under a general order of assignment entered on July 6, 2007.

cc: Hon. Stewart L. Bell, District Judge
Steven Paul Marks
Marquis & Aurbach
Eighth District Court Clerk