

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,
Appellant,
vs.
BANK OF AMERICA,
Respondent.

No. 48987

FILED

MAY 11 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint for damages. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

After proper person appellant Percy Lavae Bacon's complaint was filed, the district court entered an order directing the district court clerk to defer issuing any summonses pending the court's determination of the complaint's merits and a corresponding order directing Bacon to show cause why his complaint should not be dismissed.¹ The district court's show cause order noted that Bacon's claims "appear[ed] to ultimately stem

¹See Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 57-58, 110 P.3d 30, 40-41 (2005) (noting that the district court, pending its determination of the merits of an in forma pauperis complaint, may direct the court clerk to defer issuing any summonses).

from his own criminal conduct from which post-conviction relief ha[d] not been granted.” Bacon subsequently replied to the court’s show cause order. Thereafter, the district court entered an order dismissing Bacon’s complaint, concluding that he failed to demonstrate that he had obtained appellate or post-conviction relief. Bacon has appealed.


Having reviewed the record and Bacon’s proper person civil appeal statement, we conclude that the district court did not err in dismissing his complaint.² In particular, because the allegations in Bacon’s complaint necessarily imply the invalidity of his conviction, he must first demonstrate that he has obtained appellate or post-conviction relief from his conviction or sentence, or otherwise established innocence of the charges.³ Here, Bacon failed to demonstrate that he has obtained such relief from his conviction or sentence.


²See 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, 227, 699 P.2d 110, 111 (1985) (stating that in reviewing an order granting a motion to dismiss, this court’s task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief).

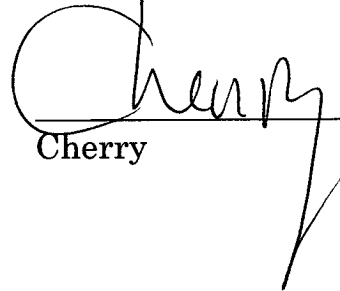
³See Morgano v. Smith, 110 Nev. 1025, 1028-29, 879 P.2d 735, 737-38 (1994); cf. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994); Levine v. Kling, 123 F.3d 580, 583 (7th Cir. 1997) (recognizing that “by operation of the doctrine of collateral estoppel, a valid criminal conviction acts as a bar to overturning that conviction in a civil damages suit”).

Accordingly, we conclude that the district court did not err in dismissing the underlying action, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Kathy A. Hardcastle, District Judge
Percy Lavae Bacon
Eighth District Court Clerk