

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. STOCKMEIER,
Appellant,
vs.
PSYCHOLOGICAL REVIEW PANEL;
AND WARDEN, CRAIG FARWELL,
Respondents.

No. 50750

FILED

SEP 09 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order, entered upon remand, denying a motion to issue a writ of mandamus or other judgment. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

FACTS AND PROCEDURAL HISTORY

In August 2003, appellant Robert L. Stockmeier filed a district court petition for writs of mandamus and prohibition or, alternatively, for a writ of habeas corpus, alleging numerous constitutional and statutory violations. In part, Stockmeier alleged that respondents, the Nevada Psychological Review Panel (Psych Panel) and Craig Farwell, Warden, had improperly required him to obtain, for parole eligibility purposes, NRS 213.1214 Psych Panel certification that he was not at high risk to reoffend, even though he was seeking parole only from the first of two consecutive sentences. Attached to the petition, among other things, was a January 13, 2003, order denying parole, which indicated that the Parole Board had decided to depart from the guideline recommended 120-150 month

minimum imprisonment period because Stockmeier had failed to obtain Psych Panel certification. The district court, without ordering an answer, denied and dismissed the petition, and Stockmeier appealed.

In June 2006, this court entered an opinion in the matter, in which we reversed the district court's decision in part and remanded so that the district court could issue a writ of mandamus directing respondents to allow Stockmeier to apply for parole, from the first of his consecutive sentences, without the Psych Panel's certification. Stockmeier v. Psychological Review Panel, 122 Nev. 534, 135 P.3d 807 (2006). The district court did not issue the writ, however, and Stockmeier, seeking to compel the court to allow him to immediately apply for parole, filed a proper person petition for a writ of mandamus in this court. After reviewing the district court's answer to the petition, we denied relief, noting that while Stockmeier's appeal was pending in early 2006, he had obtained Psych Panel certification and was considered for and denied parole. Stockmeier v. Dist. Ct., Docket No. 48677 (Order Denying Petition, May 11, 2007). We explained that our Stockmeier opinion did not direct the district court to issue any writ instructing respondents to allow Stockmeier to immediately apply for parole outside the context of any upcoming scheduled parole hearing dates and, as a result, it appeared that the district court had complied with our direction on remand to the extent possible and necessary. We also noted that Stockmeier's next parole hearing was scheduled for May 1, 2008. Id.

Meanwhile, however, on December 5, 2006, after the appeal was decided and remittitur had issued, and while we were considering the writ petition, Stockmeier moved the district court for leave to file a

supplement to his district court petition, to seek damages. The court later granted the motion, and the supplement ultimately was filed on August 22, 2007. In the supplement, Stockmeier alleged that he was denied parole in January 2003 due solely to respondents' bad faith or negligent actions in requiring him to obtain the unnecessary Psych Panel certification, and that "but for" respondents' erroneous application of the certification requirement, Stockmeier

would have received a parole in January 2003, would NOT presently still be serving his first life sentence, would not have been denied any subsequent parole in 2006 since he would not have appeared before the Board in 2006 due to being well into his second life sentence, and would at the present time be some 3 ½ years into serving his second life sentence.

Based on that asserted injury, Stockmeier argued that he was entitled to damages under NRS 41.031 (waiving sovereign immunity) and NRS 41.035 (governing tort claims against the State and governmental officials).

Stockmeier thereafter moved the district court for an order to show cause why he should not be awarded the requested damages under NRS 34.270, which provides that parties who receive a favorable judgment in mandamus proceedings must be awarded any damages sustained. Respondents opposed the motion, arguing that Stockmeier was not entitled to damages under NRS 34.270 because he was not a prevailing party. The district court agreed with respondents and denied the motion, determining that Stockmeier was not a prevailing party under NRS 34.270 because he was denied relief by the district court and this court

and because no judgment was issued in his favor. Shortly thereafter, the court entered an order refusing to issue a writ of mandamus or other judgment, and Stockmeier appealed, challenging the court's decision to deny damages.¹

DISCUSSION

As this court has previously recognized, “[d]amages are a proper request in a petition for a writ of mandamus.” Gulbranson v. City of Sparks, 89 Nev. 93, 95, 506 P.2d 1264, 1265 (1973) (citing NRS 34.270²). Here, although the district court was not required to comply with our direction to issue a writ of mandamus due to the requested relief becoming moot, Stockmeier prevailed on his original claim for such relief and thus should not have been prevented from obtaining NRS 34.270 damages on

¹To the extent that Stockmeier challenges the district court's refusal to issue a writ of mandamus, our decision in Stockmeier v. Dist. Ct., Docket No. 48677 (Order Denying Petition, May 11, 2007), remains the law of the case and thus cannot be challenged here. Hsu v. County of Clark, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (explaining that, under the law of the case doctrine, the appellate court's final decision on a matter will be followed throughout the case's subsequent process, whether in the district court or on appeal).

²NRS 34.270 provides

If judgment be given for the applicant, he shall recover the damages which he shall have sustained as found by the jury, or as may be determined by the court or master, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate shall also be awarded without delay.

the ground that he was not a prevailing party. See id. at 95-96, 506 P.2d at 1266 (recognizing that the remedy of NRS 34.270 damages is not necessarily rendered moot when the requested mandamus relief becomes moot). Even when the district court applies the wrong reasoning, however, we will affirm the district court's order if it reaches the correct result. Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987). In this matter, the district court's decision not to award Stockmeier damages constituted the right result and thus must be affirmed, because damages based on the allegations in the supplement are not available.

In the supplement, Stockmeier sought damages based on alleged injuries arising from the fact that he was denied parole in 2003 due to his failure to obtain Psych Panel certification. As respondents point out, however, whether to grant parole is a discretionary decision. Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984); Goldsworthy v. Hannifin, 86 Nev. 252, 468 P.2d 350 (1970). Under NRS 213.10705, "[n]o person has a right to parole," and standards relating to parole and parole hearings expressly create no basis on which to sue. Without any right to parole, Stockmeier is unable to show that he sustained legally recognizable injury because respondents' actions resulted in the denial of parole. It is well settled in Nevada that, "to justify a money judgment . . . the fact of damages[] must be proved." Cathcart v. Robison, Lyle, Etc., 106 Nev. 477, 480, 795 P.2d 986, 987 (1990) (quoting Alper v. Stillings, 80 Nev. 84, 86-87, 389 P.2d 239, 240 (1964)); see also NRS 34.270 (permitting a monetary award only when damages have been

sustained). Accordingly, as Stockmeier was unable to prove the asserted damage here, the district court properly denied relief,³ and we

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Richard Wagner, District Judge
Robert Leslie Stockmeier
Attorney General Catherine Cortez Masto/Carson City
Pershing County Clerk

³While Stockmeier, in his appellate briefs, indicates that he is claiming injury to his right to apply for parole, see Severance v. Armstrong, 97 Nev. 95, 624 P.2d 1004 (1981), his district court papers cannot be reasonably read as so claiming, and therefore, because he did not raise them below, his arguments need not be considered on appeal. Mason v. Cuisenaire, 122 Nev. 43, 48, 128 P.3d 446, 449 (2006).