IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN CRAIN,
Appellant,
vs.
CLARK COUNTY PUBLIC DEFENDER'S OFFICE; JOHN PACULT; AND DIANE WILLIAMS,
Respondents.

No. 51980

FILED

JUN 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court orders dismissing appellant's complaint against respondents and awarding costs to respondents John Pacult and Diane Williams. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant argues on appeal that the district court erred in dismissing his complaint against respondent Clark County Public Defender (CCPD) because they did not timely respond to the complaint and therefore his request to enter default and a default judgment should have been granted. CCPD was served on February 6, 2008. Under NRCP 12(a)(3), CCPD had 45 days, until March 24, 2008, to file an answer or other responsive pleading; CCPD timely filed its motion to dismiss on March 24, 2008. Accordingly, a default was not permissible.

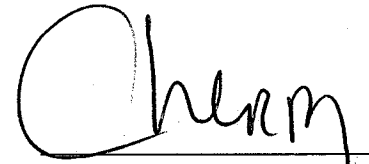
Next, appellant contends that the district court erred in dismissing his complaint because it failed to rule on several motions that he had filed in the district court case. We reject this argument as without merit; the district court was not required to rule on motions that were irrelevant to the filed complaint or rendered moot by its dismissal.

Appellant also contends that the district court erred in awarding $262.33 in costs to respondents Pacult and Williams. NRS 18.020(3) mandates an award of costs to the prevailing party in any action to recover more than $2,500. Here, appellant's complaint sought damages in excess of $10,000 and was dismissed as to Pacult and Williams, and thus, an award of costs was mandatory. Moreover, we perceive no abuse of discretion in the amount awarded by the district court. Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998).

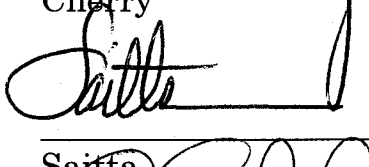
Finally, although appellant did not assert any clear argument that the district court erred in determining that his complaint failed to state a claim upon which relief can be granted, we have nevertheless considered the district court record in this regard. See Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (noting that "[t]he standard of review for a dismissal under NRCP 12(b)(5) is rigorous"). Having reviewed the complaint, we conclude that the district court did not err in dismissing it for failure to state a claim upon which relief can be granted. 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 nonmoving 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").

Accordingly, as the district court did not err in dismissing appellant's complaint and did not abuse its discretion in awarding costs, we

ORDER the judgment of the district court AFFIRMED.[1]



_____, J.
Cherry



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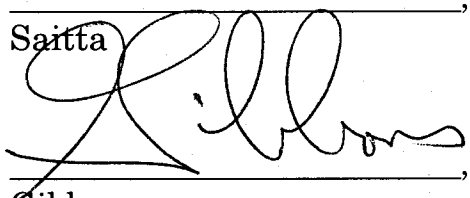

_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 15, District Judge
Steven Crain
Clark County District Attorney David J. Roger/Civil Division
Lewis Brisbois Bisgaard & Smith, LLP
Attorney General Catherine Cortez Masto/Transportation Division/Las Vegas
Eighth District Court Clerk

[1]We have considered appellant's contentions in his civil proper person appeal statement concerning his alleged "legal abuse syndrome" and conclude that they do not warrant reversal.