

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ALLAN CLARK,
Appellant,
vs.
LAS VEGAS GAME CORPORATION D/B/A
HICON, AND STUART E. APOLLO,
Respondents.

No. 52172

FILED

FEB 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

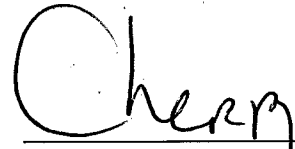
This is a proper person appeal from a district court order dismissing an action for unpaid dividends. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.


The district court dismissed appellant Michael Allan Clark's district court complaint and amended complaint for failure to state a claim and based on the doctrines of claim and issue preclusion. Clark then appealed and filed a civil proper person appeal statement. Respondents Las Vegas Game Corporation and Stuart E. Apollo filed a response, as directed.

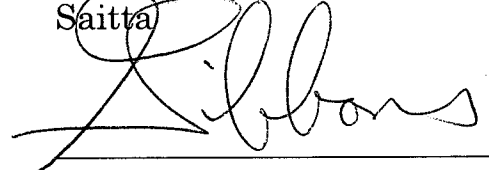
In their response, respondents apparently concede that the district court erroneously dismissed Clark's case, stating that "Respondents do not oppose this Court . . . remanding this case back to the lower court for regular proceedings." After reviewing Clark's civil proper person appeal statement and the record, we agree that the district court erred. See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008) (noting that this court reviews de novo district court orders granting motions to dismiss under NRCP 12(b)(5) for failure to state a viable claim and that complaints are properly dismissed under that rule

only if it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle him to relief); Five Star Capital Corp. v. Ruby, 124 Nev. ___, 194 P.3d 709 (2008) (denoting the elements of claim and issue preclusion). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
Michael Allan Clark
Rob Graham & Associates
Eighth District Court Clerk