

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO LOPEZ,  
Appellant,  
vs.  
NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondent.

No. 54174

**FILED**

**FEB 03 2011**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in an inmate litigation matter. First Judicial District Court, Carson City; William A. Maddox, Judge.

Appellant Eduardo Lopez, an inmate at Ely State Prison, brought a tort action alleging that respondent Nevada Department of Corrections was negligent in failing to follow its policies and procedures. Lopez contends that the Department moved Lopez and inmate Jeffery Troxel into the same cell, despite having knowledge that the inmates were known enemies. Lopez allegedly sustained injuries caused by Troxel during an altercation in their cell at the prison on June 29, 2006.

According to the Department's inmate grievance procedure, an inmate must initiate an informal grievance involving personal injury within six months of the date that the claim arises. Lopez filed an informal inmate grievance on March 10, 2007, more than six months after the alleged claim arose. The Department rejected the grievance as untimely. Thereafter, Lopez filed a first-level grievance on April 2, 2007,

and it was likewise rejected as untimely. Lopez never filed a second-level grievance.<sup>1</sup>

Lopez filed a civil complaint in the district court, and the Department thereafter filed a motion to dismiss the complaint, pursuant to NRCP 12(b)(5), or in the alternative, a motion for summary judgment. The district court granted the motion to dismiss on the basis that Lopez failed to exhaust administrative remedies prior to initiating a state tort action.

On appeal, Lopez argues that the district court erred in granting the Department's motion to dismiss due to Lopez's failure to exhaust administrative remedies pursuant to NRS 41.0322 and 209.243.<sup>2</sup> We disagree, and we therefore affirm the district court's order.

Standard of review

A district court order granting an NRCP 12(b)(5) motion to dismiss is subject to rigorous appellate review. Sanchez v. Wal-Mart Stores, 125 Nev. \_\_\_, \_\_\_, 221 P.3d 1276, 1280 (2009). "Similar to the trial court, this court accepts the plaintiff[s] factual allegations as true, but the

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<sup>1</sup>The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

<sup>2</sup>Lopez also argues that NRS 209.243(1) violates the Fourteenth Amendment's Equal Protection Clause because it restricts the time frame for prisoners to file a personal injury administrative claim to six months from the date of the injury, while nonprisoners may file an action within two years of the injury. We conclude that NRS 209.243(1) does not violate the Fourteenth Amendment's Equal Protection Clause, as the statute of limitations placed on prisoners who bring tort actions against governmental entities is rationally related to legitimate governmental purposes. See Arata v. Faubion, 123 Nev. 153, 159, 161 P.3d 244, 248 (2007).

allegations must be legally sufficient to constitute the elements of the claim asserted.” Id. “A complaint will not be dismissed for failure to state a claim ‘unless it appears beyond a doubt that the plaintiff could prove no set of facts . . . [that] would entitle him [or her] to relief.’” Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (third alteration in original) (quoting Edgar v. Wagner, 101 Nev. 226, 228, 699 P.2d 110, 112 (1985)).

The Department’s motion to dismiss

Lopez contends that exhaustion of administrative remedies is not a necessary prerequisite to filing a tort claim against the State of Nevada or any of its political subdivisions. We disagree.

The doctrine of exhaustion of administrative remedies is well-established in the jurisprudence of administrative law. Woodford v. Ngo, 548 U.S. 81, 88 (2006); First Am. Title Co. v. State of Nevada, 91 Nev. 804, 806, 543 P.2d 1344, 1345 (1975). The exhaustion doctrine requires that a person exhaust administrative remedies before proceeding in the district court “and failure to do so renders the controversy nonjusticiable.” Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007). “Exhaustion of administrative remedies serves two main purposes. First, exhaustion protects administrative agency authority [by giving] an agency an opportunity to correct its own mistakes . . . before it is haled into . . . court and it discourages disregard of [the agency’s] procedure. Second, exhaustion promotes efficiency.” Woodford, 548 U.S. at 89 (internal citations and quotations omitted).

Exhaustion “is particularly important in relation to state corrections systems because it is ‘difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its

prisons.” Id. at 94 (quoting Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973)). As such, construing NRS 41.0322 to require complete exhaustion of administrative remedies fits within the general scheme of our well-established administrative jurisprudence, whereas Lopez’s interpretation would turn NRS 41.0322 “into a largely useless appendage.” Id. at 93.

The Nevada Department of Corrections established an inmate grievance procedure to provide for administrative means to promptly and fairly address inmate problems and concerns. The inmate grievance procedure includes one informal and two formal levels of review. An inmate who is dissatisfied with the response to a grievance at any level may appeal the grievance to the next level. Here, Lopez did not exhaust his administrative remedies before proceeding in the district court because he failed to file a second formal grievance.

Moreover, NRS 41.0322(3) expressly instructs the district court to dismiss an action if a prisoner has not timely filed an administrative claim pursuant to NRS 209.243. NRS 209.243(1) states that prisoners’ claims “must be filed within six months after the date of the alleged loss, damage or injury.” Additionally, the inmate grievance procedures provide that an inmate’s right to pursue resolution of his personal injury claim is abandoned if the inmate fails to submit a grievance form within six calendar months. Therefore, Lopez failed to file his negligence claim with the Department within the necessary six-month time frame set forth in NRS 209.243(1).

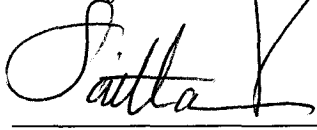
By failing to file a second formal grievance and submitting a tardy negligence claim, Lopez thwarted the objectives of the Department’s internal grievance procedures and the doctrine of exhaustion of administrative remedies. Thus, we conclude that the district court did not


err in granting the Department's motion to dismiss, as Lopez failed to exhaust his administrative remedies pursuant to NRS 41.0322 and 209.243.

In light of the foregoing, we affirm the district court's order granting the Department's motion to dismiss.

IT IS SO ORDERED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William A. Maddox, District Judge  
Janet L. Chubb, Settlement Judge  
Robert J. Kilby  
Attorney General/Carson City  
Carson City Clerk