

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DAVID MORROW,
Appellant,
vs.
HOWARD SKOLNIK, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS; DR. BRUCE
BANNISTER, DEPUTY DIRECTOR OF
MEDICAL SERVICES, NEVADA
DEPARTMENT OF CORRECTIONS;
AND DR. JOHN SCOTT, DIRECTOR
OF MEDICAL SERVICES, LOVELOCK
CORRECTIONAL CENTER,
Respondents.

No. 55416

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing the underlying action regarding appellant's medical treatment. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

Having considered the record and appellant's proper person appeal statement, we affirm the judgment of the district court. The district court properly dismissed appellant's complaint, as his claims were based on professional negligence, his claims did not involve *res ipsa loquitur*, and appellant failed to submit the statutorily required medical affidavit with his complaint.¹ NRS 41A.071 (setting forth the affidavit

¹Appellant further argues that his claim of professional negligence "is essentially parallel" to a deliberate indifference claim, the basis for which is found under the United States Constitution, and thus the district court should have provided a deliberate indifference analysis to his claim. We find this argument to be without merit, as appellant specifically
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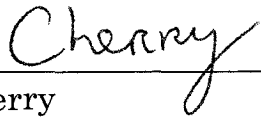
requirement for medical malpractice claims); NRS 41A.100 (enumerating exceptions to the affidavit requirement—known as the *res ipsa loquitur* doctrine); Fierle v. Perez, 125 Nev. ___, ___, 219 P.3d 906, 912 (2009) (holding that NRS 41A.071's affidavit requirement extends to professional negligence actions, with the exception of claims based on the *res ipsa loquitur* doctrine). Additionally, appellant's status as an inmate or indigent person does not excuse his failure to attach the requisite affidavit to his complaint. See Perry v. Stanley, 83 S.W.3d 819, 825 (Tex. App. 2002) (holding that the requirement to file a medical affidavit with a complaint can properly be applied to inmates because they bear the burden of proof at trial, which requires expert testimony); Gill v. Russo, 39 S.W.3d 717, 718-19 (Tex. App. 2001) (holding that a statute requiring an expert report to be filed within 180 days of an inmate's filing of a medical malpractice suit did not violate the open courts provision of the Texas Constitution, despite the inmate's arguments that he could not interview physicians from prison and did not have enough money to obtain the reports); see also O'Hanrahan v. Moore, 731 So. 2d 95, 96-97 (Fla. Dist. Ct. App. 1999) (rejecting a prisoner's request to declare unconstitutional a pre-suit requirement for a medical expert opinion to initiate his medical malpractice action); Ledger v. Ohio Dept. of Rehab. & Corr., 609 N.E.2d

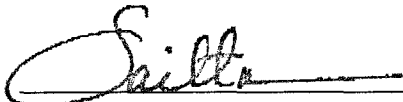
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maintained in his complaint that his claims were based on state law and that he was not raising a federal cause of action. Additionally, a claim of negligence in treating a medical condition is not sufficient to state a claim for deliberate indifference under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 106 (1976). Furthermore, to the extent appellant is attempting to raise a state law deliberate indifference claim, appellant cites to no authority to support such a claim.

590, 593-95 (Ohio Ct. App. 1992) (holding that an inmate's medical malpractice action was properly dismissed with prejudice for failure to meet that state's statutory affidavit requirement). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Montero, District Judge
Richard David Morrow
Attorney General/Carson City
Pershing Co. Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

FARMERS INSURANCE EXCHANGE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALORIE VEGA, DISTRICT JUDGE,
Respondents,
and
ANA GUAYASAMIN,
Real Party in Interest.

No. 57154

FILED

DEC 09 2010

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

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

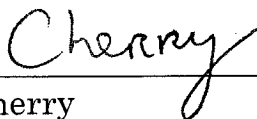
This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion for summary judgment in a declaratory relief action.

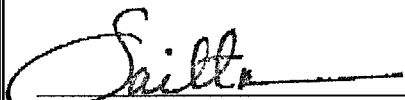
A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, see NRS 34.160, or to control a manifest abuse of discretion. See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981). By contrast, a writ of prohibition may issue to confine the district court to the proper exercise of its prescribed jurisdiction when the court has acted in excess of its jurisdiction. See NRS 34.320. Both mandamus and prohibition are extraordinary remedies, and it is within this court's discretion to determine if such petitions will be considered. Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Generally, we will not exercise our discretion to consider writ petitions that challenge district court orders denying summary judgment motions unless no disputed

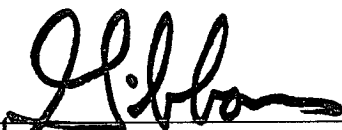
factual issues remain and summary judgment is clearly required by a statute or rule, or an important issue of law requires clarification. Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997). Instead, an appeal from any adverse final judgment generally provides an adequate legal remedy, precluding writ relief. See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004).

Having reviewed the petition and accompanying documents, we conclude that an appeal will provide an adequate remedy, and therefore, this court's extraordinary relief is not warranted at this time. See Smith, 113 Nev. 1343, 950 P.2d 280; Pan, 120 Nev. 222, 88 P.3d 840. Accordingly, we order the petition denied. NRAP 21(b)(1).

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
David L. Riddle & Associates
Christensen Law Offices, LLC
Eighth District Court Clerk