

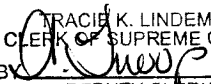
IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DAVID MORROW,
Appellant,
vs.
HOWARD SKOLNIK, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS; WARDEN,
LOVELOCK CORRECTIONAL
CENTER, JACK PALMER; ROBERT
LEGRAND, ASSOCIATE WARDEN
OF PROGRAMS; RUGELIO
HERRERA, CCS II; JOYCE
THOMSON, CCS II; QUENTIN
BYRNE, CCS III; NEVADA
DEPARTMENT OF CORRECTIONS;
AND THE STATE OF NEVADA,
Respondents.

No. 55417

FILED

FEB 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting a motion to dismiss a tort action. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

The district court's order granting respondents' NRCP 12(b)(5) motion to dismiss is reviewed under a rigorous standard, accepting all factual allegations in the complaint as true, and drawing all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

Having considered the record and appellant's proper person appeal statement, we conclude that the district court did not err in


dismissing appellant's complaint for failure to timely and properly exhaust his administrative remedies and to file an administrative claim form. Nevada law mandates that an inmate bringing a tort action against Nevada Department of Corrections (NDOC) employees or any of its agents must first exhaust his administrative remedies, and the law requires dismissal of a tort action if the inmate fails to file his administrative claim arising out of that tort within six months of the alleged injury. See NRS 41.0322(1) and (3); NRS 209.243(1). Likewise, the NDOC's prison regulations regarding grievance procedures provide that an inmate's right to pursue resolution of his tort claim is abandoned if the inmate fails to submit an "informal grievance form" within six calendar months. AR 740.02 §§ 1.4.1.1-2 (Dep't of Corr. Jan. 5, 2004).


Here, appellant had until December 2006 to file an informal grievance challenging the circumstances of his June 2006 transfer from Lovelock Correctional Center to the Southern Desert Correctional Center. Appellant, however, filed his informal grievance in June 2007, well beyond the six-month deadline set forth under Nevada Law and the NDOC's prison regulations. See NRS 209.243(1); AR 740.02 §§ 1.4.1.1-2. Additionally, nothing in the record indicates that appellant timely filed an administrative claim form, as required under NRS 41.0322(3). Thus, we conclude that the district court did not err in granting respondents' motion to dismiss based on appellant's failure to timely exhaust his administrative remedies and file an administrative claim form, pursuant

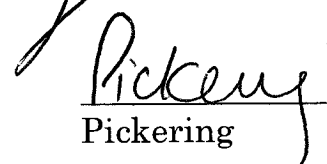
to NRS 41.0322, NRS 209.243, and AR 740.02 §§ 1.4.1.1 and 1.4.1.2.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Gibbons J.


Cherry, J.


Pickering, J.

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

¹Having considered appellant's remaining arguments on appeal, we conclude that they lack merit.