

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIZ LOLA'S SPIRITS AND GAMING,
LLC D/B/A MIZ LOLA'S, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
COUNTY OF CLARK, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 57816

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint in a business license matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

FACTUAL AND PROCEDURAL HISTORY

Appellant Miz Lola's Spirits and Gaming initiated the underlying action for a preliminary injunction, writ of mandamus, judicial review, and declaratory relief in an effort to overturn respondent Clark County's decision to deny Miz Lola's business license and occupancy permit application. Clark County moved to dismiss the action, arguing that Miz Lola's had failed to exhaust its administrative remedies by not seeking a zoning change that would allow for approval of the business license. The district court ultimately dismissed the action, as requested, and this appeal followed.

Having reviewed the parties' briefs and appendix, we conclude that the district court reached the right result, albeit for the wrong

reason.¹ See *Sengel v. IGT*, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000) (explaining that this court will affirm a district court decision that reached the right result, but for the wrong reasons). A party “generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable.” *Mesagate Homeowners’ Ass’n v. City of Fernley*, 124 Nev. 1092, 1099, 194 P.3d 1248, 1252 (2008) (internal quotation omitted). Here, Miz Lola’s complaint challenged Clark County’s denial of its business license and occupancy permit application on the basis of the location’s zoning status. But when a business license is denied, the applicant may appeal from such a decision to a hearing officer. See Clark County Code § 6.04.090(j). Then, if the applicant is aggrieved by the hearing officer’s decision, it may seek judicial review in the district court. *Id.* Our review of the record provides no indication that Miz Lola’s ever sought review in accordance with this section of the Clark County Code. Thus, because Miz Lola’s failed to exhaust the available internal appellate remedies, and was not seeking judicial review of a final agency decision, the complaint for judicial review was rendered nonjusticiable and unripe for review. See *Mesagate*, 124 Nev. at 1100-01, 194 P.3d at 1254 (explaining that the court can only consider a petition for judicial review from an administrative decision that has been properly challenged through the applicable appellate

¹Although the district court addressed the exhaustion of administrative remedies and ultimately concluded that they had not yet been exhausted, thus barring Miz Lola’s complaint, the district court and the parties focused on remedies related to applying for a zoning change. While we agree that the administrative remedies were not exhausted in this matter, our conclusion is based on the exhaustion of different administrative remedies, as explained below.


procedures); *see also* NRS 233B.130(1) (“Where appeal is provided within an agency, only the decision at the highest level is reviewable unless a decision made at a lower level in the agency is made final by statute.”).


Similarly, to the extent that Miz Lola’s challenged the Clark County planning department’s decision that its business was not permitted at the requested location due to the location’s current zoning, there are administrative remedies available to challenge such a decision that must be exhausted before seeking judicial review. *See* Clark County Code § 30.04.040(1); NRS 278.3195. Once again, nothing in the record provides any indication that Miz Lola’s availed itself of these remedies before seeking relief from the district court.

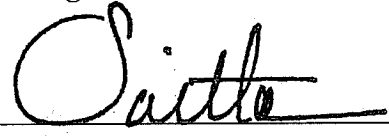
With regard to the other relief sought by appellant in the underlying action, writ relief was not appropriate and was thus correctly denied below because a petition for a writ of mandamus is not the proper vehicle to challenge an administrative decision when the administrative remedies have not been exhausted. *See Mesagate*, 124 Nev. at 1100-01, 194 P.3d at 1254; *see also Kay v. Nunez*, 122 Nev. 1100, 1104-05, 146 P.3d 801, 804-05 (2006) (explaining that judicial review, not writ relief, is the appropriate vehicle to challenge a local zoning and planning decision). Similarly, because Miz Lola’s had not exhausted its administrative remedies, such that dismissal of its nonjusticiable complaint was required, the district court did not abuse its discretion in denying its request for a preliminary injunction. *See Dangberg Holdings Nev., L.L.C. v. Douglas Cnty.*, 115 Nev. 129, 142-143, 978 P.2d 311, 319 (1999) (explaining that a preliminary injunction is available if the applicant can show a likelihood of success on the merits and a reasonable probability that the nonmoving party’s conduct will result in irreparable harm).

Accordingly, for the reasons set forth above, we affirm the district court's order dismissing Miz Lola's action. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that this court reviews an order granting a motion to dismiss de novo).

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Mark R. Denton, District Judge
Kathleen J. England, Settlement Judge
Kaempfer Crowell/Las Vegas
Clark County District Attorney/Civil Division
Eighth District Court Clerk