

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY R. SCHMIDT,
Appellant,

vs.

WASHOE COUNTY; DEPARTMENT OF
COMMUNITY DEVELOPMENT FOR
WASHOE COUNTY; DEAN
DIETERICH; MIKE HARPER; AND
WASHOE COUNTY COMMISSIONERS,
Respondents.

No. 36085

FILED

MAR 05 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order that granted a motion to dismiss appellant's complaint for damages and denied injunctive relief. Having reviewed the record, we conclude that the district court erred in dismissing Schmidt's complaint for damages and denying permanent injunctive relief.

The district court dismissed Schmidt's complaint for failure to satisfy the \$7,500 jurisdictional amount in controversy necessary to invoke the jurisdiction of the district court.¹ When a complaint seeks an unliquidated amount of damages, as here, the sum pleaded by the plaintiff should control unless it is clear that jurisdiction is unattainable.² Here,

¹See Nev. Const. art. 6, § 6; NRS 4.370(1)(b); Morrison v. Beach City LLC, 116 Nev. 34, 991 P.2d 982 (2000).

²See Deutsch v. Hewes Street Realty Corporation, 359 F.2d 96, 99-100 (2d Cir. 1966) (holding that in a torts case, where a plaintiff seeks unliquidated damages, the sum pleaded by the plaintiff should generally control); see also Maldonado v. Superior Court (Corrigan), 52 Cal. Rptr. 2d 805, 808 (Ct. App. 1996) ("The [trial] court may believe it highly unlikely that plaintiff will recover the amount demanded, but this is not enough to defeat jurisdiction....") (quoting Walker v. Superior Court, 807 P.2d 418, 426 (Cal. 1991)).

Schmidt alleged damages in excess of \$10,000, in part, for emotional distress, embarrassment, and shock. Whether he is likely to prevail on the merits is not the proper question when determining subject matter jurisdiction; instead a court should “look[] to the possibility of a jurisdictionally appropriate verdict, not to its probability.”³ Because it was not legally certain that Schmidt could not recover damages in excess of \$7,500, we conclude that the district court erred in dismissing Schmidt’s complaint for lack of subject matter jurisdiction.

The district court also summarily denied Schmidt’s application for a permanent injunction. Because Schmidt’s opposition to the motion to dismiss included matters outside the pleadings, and the district court considered evidence outside the pleadings, the order denying injunctive relief must be treated as one granting summary judgment.⁴ Respondents argue that the denial of injunctive relief was proper because Schmidt cannot show an ongoing or future threat that respondents will once again deny Schmidt access to public records, or interfere with his rights to conduct normal business with respondent Washoe County. They also point to NRS 239.011, which allows an application to the courts for an order permitting the inspection of public records, as an adequate remedy at law for Schmidt. The existence of a legal remedy, however, does not preclude injunctive relief when there is a likelihood of multiplicity of suits.⁵ The record contains some evidence that respondents denied

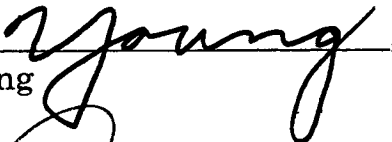
³Maldonado, 52 Cal. Rptr. 2d at 808.


⁴See NRCP 12(c); Lumbermen’s Underwriting v. RCR Plumbing, 114 Nev. 1231, 969 P.2d 301 (1998).

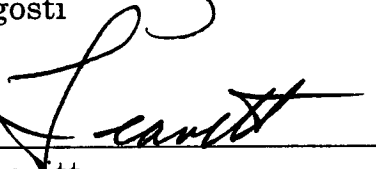
⁵See Lee v. Bickell, 292 U.S. 415, 421 (1934) (stating that the necessity for multiplicity of actions for legal remedy alone is sufficient to uphold an injunction).

Schmidt access to public records after initially agreeing to provide him access. Thus, we conclude that there remain genuine issues of material fact regarding Schmidt's claim for injunctive relief, and that the district court erred in granting summary judgment for respondents on this claim.

Based on the foregoing, we REVERSE the district court's order and REMAND for further proceedings consistent with this order.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Washoe County District Attorney
Gary R. Schmidt
Washoe District Court Clerk