

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MANLEY,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS; DR. BANNISTER;
JOHN SCOTT; AND DON POAG,
Respondents.

No. 66709

FILED

AUG 3 1 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a civil rights and medical malpractice action. Eleventh Judicial District Court, Pershing County; Michael Montero, Judge.

Appellant Charles Manley argues the district court erred in granting the respondents' motion to dismiss his complaint. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. ___, ___, 267 P.3d 771, 774 (2011). In addressing Manley's arguments, we must accept all of the factual allegations of the complaint as true and draw all inferences in favor of Manley. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (explaining that, on appeal, a court rigorously reviews a dismissal for failure to state a claim, accepting all of the factual allegations in the complaint as true, and drawing all inferences in favor of the plaintiff). Having reviewed Manley's civil appeal statement, the response and the record on appeal, we conclude the district court properly dismissed Manley's claims.

First, Manley argues the district court erred in denying his motion for a default judgment. Manley's argument lacks merit. NRCP 55(e) states "[n]o judgment by default shall be entered against the State or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." See *Nye Cnty. v. Washoe Medical Center, Inc.*, 108 Nev. 896, 898, 839 P.2d 1312, 1314 (1992). Here, the district court concluded Manley failed to establish his claims or his right to relief because his Eighth Amendment issues were precluded by the doctrine of res judicata, see *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055 194 P.3d 709, 713 (2008), and because Manley failed to support his medical malpractice allegations with a medical expert affidavit, see NRS 41A.071. As Manley did not establish his claims by evidence satisfactory to the court, the district court properly denied his motion for default judgment. Therefore, Manley fails to demonstrate he is entitled to relief for this claim.¹


Second, Manley argues the district court erred in dismissing his medical malpractice claims for failure to include an affidavit by a medical expert as required by NRS 41A.071. Manley argues he provided a letter from a physician regarding his medical issues and that letter should have been sufficient to satisfy the affidavit requirement. Manley's


¹Manley also asserts the district court erred in permitting two of the respondents, John Scott and Don Poag, to join the motion to dismiss after it had been filed. Manley appears to assert that he would have been entitled to a default judgment against Scott and Poag but for the district court's permission to join in the motion to dismiss. Because Manley was not entitled to a default judgment, we conclude that Manley is not entitled to relief regarding his claim of improper joinder.

argument lacks merit. NRS 41A.071 requires dismissal of an action claiming medical malpractice if the action is filed without an affidavit from a medical expert supporting the allegations contained in the action. As noted by the district court, an unsworn opinion letter by a medical expert does not satisfy the affidavit requirement of NRS 41A.071. See *Mountainview Hospital Inc. v. Eighth Judicial Dist. Court*, 128 Nev. ___, ___, 273 P.3d 861, 866 (2012). Accordingly, the district court properly concluded Manley did not satisfy NRS 41A.071 and properly granted respondents' motion to dismiss. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Montero, District Judge
Charles Manley
Attorney General/Carson City
Pershing County Clerk

²We have reviewed all documents Manley has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Manley has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.