

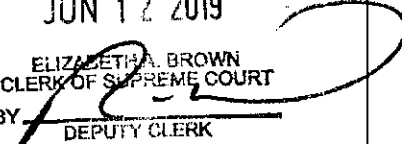
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN BRADLEY HODGES,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
AND THE STATE OF NEVADA,
Respondents.

No. 77065-COA

FILED

JUN 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Bradley Hodges appeals from a district court order dismissing a complaint in a tort action. First Judicial District Court, Carson City; James Todd Russell, Judge.

In the proceedings below, Hodges, an inmate at Lovelock Correctional Center, filed a complaint against respondents alleging that respondents' employees neglected to exercise due care in their operations and failed to properly apply credits Hodges earned pursuant to NRS 209.4465. Hodges asserts that their negligence resulted in Hodges being denied due process and the right to be heard, and his complaint seeks monetary damages. After respondents failed to answer, Hodges sought a default judgment and the district court ordered respondents to file a response. After respondents filed an opposition, the district court denied the motion for default judgment. Respondents then filed a motion to dismiss, which the district court granted over Hodges' opposition, and this appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). This court will affirm the

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decision to dismiss a complaint under NRCP 12(b)(5) when the complaint's factual allegations do not entitle a plaintiff to relief under the claims asserted. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.


Here, the district court concluded that Hodges' complaint failed to state a claim upon which relief could be granted, noting that the complaint failed to establish the elements of a negligence claim and failed to establish that Hodges exhausted his administrative remedies. Hodges' complaint seeks damages based on his allegation that respondents failed to properly award him credits pursuant to NRS 209.4465. Although titled as a negligence claim, the allegations assert a challenge to the computation of time that Hodges served. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 809, 312 P.3d 491, 498 (2013) (explaining that this court analyzes "a claim according to its substance, rather than its label"). And "the only remedy available to an incarcerated person to challenge the computation of time that the person has served pursuant to a judgment of conviction" is a post-conviction petition for writ of habeas corpus. NRS 34.724(2)(c). Thus, based on our review of the record, we agree that, even taking Hodges' allegations as true, his complaint fails to state a claim upon which relief can be granted. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.


Moreover, we note that even if Hodges could file a civil negligence claim to challenge the computation of his time or seek damages based on a purported improper computation, based on our review of the record, Hodges failed to establish respondents' duty. *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009) (explaining that to prevail on a negligence claim, a plaintiff must establish duty, breach, causation, and damages). While Hodges asserted

below that respondents' duty to apply the credits arose from NRS 209.131, which enumerates the Director of the Department of Corrections' duties, nothing in that statute references the calculation of prisoners' sentences as Hodges alleged. Thus, we discern no error in the district court's dismissal based on its conclusion that Hodges' complaint failed to establish the elements of a negligence claim. See *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Steven Bradley Hodges
Attorney General/Carson City
Carson City Clerk