

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY D. MORAGA,
Appellant,
vs.
MICHAEL B. KOEHN, G.P.; AND
RENEE BAKER, WARDEN,
Respondents.

ROY DANIELS MORAGA,
Petitioner,
vs.
MICHAEL B. KOEHN, G.P.; AND
RENEE BAKER, WARDEN,
Respondents.¹

No. 78975-COA

FILED

DEC 18 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK
No. 79472-COA

*ORDER OF AFFIRMANCE (DOCKET NO. 78975-COA)
AND DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION (DOCKET NO. 79472-COA)*

In these consolidated matters, Roy D. Moraga appeals from an order granting summary judgment in a civil rights action in Docket Number 78975-COA and seeks a writ of mandamus or prohibition in Docket Number 79472-COA. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Moraga, an inmate at High Desert State Prison, filed a civil rights complaint against respondents Michael Koehn and Renee Baker alleging medical malpractice and deliberate indifference to a serious medical need. Baker moved for summary judgment, asserting that Moraga

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

failed to exhaust his administrative remedies as to his claims against Baker. The district court granted Baker's motion, over Moraga's objection, and the appeal in Docket Number 78975-COA followed. In Docket Number 79472-COA, Moraga seeks a writ of mandamus or prohibition requiring Medical Director Romeo Aranas to either perform a medical procedure, or cancel the procedure and transfer Moraga back to Northern Nevada Correctional Center.

This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine issues of fact. *Id.* at 731, 121 P.3d at 1030-31.

Here, in Docket Number 78975-COA, the district court granted summary judgment in favor of Baker, concluding that Moraga failed to exhaust his administrative remedies as to the allegations against Baker. Specifically, the district court found that Moraga's complaint alleged Baker was deliberately indifferent to his medical needs by failing to transfer Moraga to another prison for treatment of his stomach ulcer, but none of Moraga's grievances mentioned these alleged facts or related to the allegations in the complaint against Baker. To proceed with a civil rights action pursuant to 42 U.S.C. § 1983, an inmate must exhaust all available administrative remedies. *See* 42 U.S.C. § 1997e(a); *Berry v. Feil*, 131 Nev. 339, 341-42, 357 P.3d 344, 345 (Ct. App. 2015). The district court properly

dismisses a complaint when the plaintiff fails to exhaust his administrative remedies. *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007); *see also Albino v. Baca*, 747 F.3d 1162, 1169-71 (9th Cir. 2014) (explaining that when an inmate's failure to exhaust is clear from the face of the complaint, dismissal for failure to state a claim is appropriate, but when exhaustion is not clear from the complaint, the matter should be determined by summary judgment and the court may, in its discretion, limit discovery to evidence concerning exhaustion).

Based on our review of the record, we conclude that the district court correctly determined Moraga failed to exhaust his administrative remedies. And although Moraga summarily asserts that he properly exhausted his administrative remedies, he has failed to provide any cogent argument as to this position. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that are not cogently argued). Thus, we discern no error in the district court's grant of summary judgment. *See Berry*, 131 Nev. at 341-42, 357 P.3d at 345; *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

We next turn to Moraga's petition for writ of mandamus or prohibition in Docket Number 79472-COA. A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. *See NRS 34.160; Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). This court may issue a writ of prohibition to arrest the proceedings of a district court


exercising its judicial functions when such proceedings are in excess of the district court's jurisdiction. See NRS 34.320; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The decision as to whether a petition for extraordinary writ relief will be entertained rests within this court's sound discretion. See *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

As an initial matter, we note that Moraga has failed to provide this court with an appendix or any other supporting documents and, therefore, this court does not have any information essential to understanding the matters set forth in the writ petition. See NRAP 21(a)(4) (requiring the petitioner to submit an appendix that includes any documents that may be essential to understand the matters set forth in the petition); *Pan*, 120 Nev. at 229, 88 P.3d at 844. Regardless, based on the petition before us, it does not appear that Moraga sought relief in the district court prior to filing his petition. Thus, Moraga has a speedy and adequate remedy available in that he can seek relief in the district court and, if aggrieved, can then appeal any adverse judgment to the appellate courts. See *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558 (explaining that writ relief is not available when the petitioner has an adequate and speedy remedy, and that an appeal from a final judgment is typically an adequate and speedy remedy). Accordingly, we are not persuaded that this court's intervention by way of extraordinary relief is warranted and we therefore deny the petition. NRAP 21(b)(1); *D.R. Horton*, 123 Nev. at 474-75, 168 P.3d at 736-37.

In summary, we order the judgment of the district court affirmed in Docket Number 78975-COA and deny the petition for writ relief in Docket Number 79472-COA.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Steve L. Dobrescu, District Judge
Roy Daniels Moraga
Attorney General/Carson City
Attorney General/Las Vegas
White Pine County Clerk