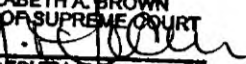


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID NORTH,  
Appellant,  
vs.  
CORECIVIC, INC.,  
Respondent.

No. 87088-COA

**FILED**  
JUL 31 2024  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David North appeals from a district court order dismissing his complaint in an inmate litigation matter. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

North is a pretrial detainee at Nevada Southern Detention Center located in Pahrump. The facility is owned and operated by respondent CoreCivic, Inc. (CoreCivic), pursuant to a correctional services agreement with the United States government. On May 16, 2019, North scratched his hand during physical activity. The following day, North was involved in a physical altercation with another inmate, where North hit the inmate in the mouth with the same hand he had scratched the previous day, his hand was cut by the inmate's teeth, and as a result, one of North's fingers began to swell and felt broken. When North told a nurse that day about his finger, he was informed that he would need to address it the next day with the shift change. On May 18, North showed a nurse his finger, stating that it was in pain and felt broken, but he only received ointment and a Band-Aid. In the following days, a doctor prescribed North with antibiotics, but North alleged that the antibiotics were ineffective, that nurses at the facility refused to help him, and that his finger healed

“disfigured at a 90[-] degree angle, [peeling] skin and changing in colors.” In June, North received x-rays for his injured finger, which indicated a fracture, and was seen by a hand specialist who suggested physical therapy and an orthopedic surgeon who noted that surgery was a possibility. After receiving physical therapy and attending appointments with hand specialists, it was ultimately determined that North required surgery in March 2020, which he received in October 2020.

In April 2021, North filed a complaint in the Fifth Judicial District Court asserting various state and federal claims against CoreCivic and various individual defendants, including wardens, nurses, and a doctor.<sup>1</sup> North’s complaint alleged that CoreCivic failed to timely provide him with medical care for his fractured and infected finger that required surgery. CoreCivic was served with North’s second amended complaint on December 6, 2021. However, North did not serve any of the named individual defendants. Because the second amended complaint asserted federal claims, CoreCivic removed the case to the United States District Court for the District of Nevada. In January 2022, North again moved to amend his complaint in the federal district court. In March 2022, the federal district court granted North’s motion to amend his complaint, screened his third amended complaint, and dismissed North’s federal claims. The federal district court then remanded the case back to the state district court.

In May 2022, CoreCivic filed a motion to dismiss North’s third amended complaint, which was designated as the operative complaint. Specifically, CoreCivic argued that, because North’s federal claims were

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<sup>1</sup>We note that CoreCivic is the only respondent on appeal.

dismissed, the only claims that remained pending were (1) professional negligence; (2) gross negligence; and (3) violations under the Nevada Constitution. CoreCivic asserted that dismissal was warranted because (1) North's claims were barred by the applicable statute of limitations for each claim; (2) North did not attach a medical affidavit in support of his professional negligence claim pursuant to NRS 41A.071; and (3) the complaint failed to state a claim for relief.

After a hearing, the district court entered a written order dismissing North's claims in June 2023, finding that North's professional negligence claim was barred by the statute of limitations as North conceded that he discovered his injury on May 17, 2019, but then claimed that the defendants did not properly treat it. Thus, North had until May 17, 2020, to file a professional negligence claim. The court further found that even if, construing all the facts in North's favor, he did not believe someone's negligence caused his injury until June 24, 2019 (the date the surgeon informed him about possibly needing surgery), North had until June 24, 2020, to file his professional negligence claim. Because North failed to file his complaint until April 2021, the district court dismissed his professional negligence claim finding that the statute of limitations had expired. The court also found that dismissal of the professional negligence claim was warranted pursuant to NRS 41A.071 because North failed to attach an affidavit from a medical expert. The court further found that North's gross negligence claim was duplicative of his professional negligence claim and thus was also barred by the one-year statute of limitations. With respect to North's claims pursuant to the Nevada Constitution, the court found that North's allegations were vague and conclusory, and he failed to establish how CoreCivic was liable, resulting in a constitutional deprivation. Finally,

the court found that North failed to serve any of the individual defendants, and thus, dismissed the individual defendants. North now appeals.

On appeal, North argues that the district court erred in dismissing his professional negligence claim by using the incorrect date as to the discovery of his injury. He also alleges that dismissal was not warranted for his failure to include a medical expert affidavit because his injury was within the common knowledge of a layperson and did not require an expert. He further argues that the district court erred in dismissing his Nevada Constitution Art. 1 § 8 due process claim for failure to state a claim.

We review a district court order granting a motion to dismiss de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014). This court also reviews a “district court’s decision to dismiss [a] complaint for failing to comply with NRS 41A.071 de novo.” *Yafchak v. S. Las Vegas Med. Invs., LLC*, 138 Nev., Adv. Op. 70, 519 P.3d 37, 40 (2022). Under NRS 41A.071, a professional negligence action requires a supporting affidavit from a medical expert. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006).

North’s professional negligence claim was properly dismissed due to his failure to file a medical affidavit with his complaint. North argues that he did not need to attach an affidavit as a broken bone is the type of injury that does not call for expert testimony and it was within the common knowledge sufficient to determine negligence, citing to *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. 350, 466 P.3d 1263 (2020). However, our supreme court has recently overruled the common knowledge exception created in *Curtis* and reiterated that only the res ipsa loquitor exceptions enumerated in NRS 41A.100 are exceptions to the affidavit requirement, which do not apply to the facts in this case. *See*

*Limprasert v. Pam Specialty Hospital of Las Vegas*, 140 Nev., Adv. Op. 45, \_\_\_ P.3d \_\_\_ (June 27, 2024). Thus, the district court properly dismissed North’s professional negligence claim due to North’s failure to comply with NRS 41A.071’s affidavit requirement.

Turning to North’s claim for gross negligence, it consisted of allegations related to medical treatment for his injury, and based upon the gravamen of the allegations, sounded in professional negligence. As a result, it was also properly dismissed for North’s failure to comply with NRS 41A.071’s affidavit requirement. *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 643, 403 P.3d 1280, 1285 (2017) (noting that, to determine how to characterize a claim, the appellate courts look to the gravamen of each claim “rather than its form to see whether each individual claim is for medical negligence or ordinary negligence”).<sup>2</sup>

Finally, North’s due process claim pursuant to the Nevada Constitution was also properly dismissed.<sup>3</sup> An order granting a motion to dismiss under NRCP 12(b)(5) for failure to state a claim is “subject to a rigorous standard of review on appeal.” *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008) (internal quotation marks omitted). In reviewing dismissal under NRCP 12(b)(5), we recognize

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<sup>2</sup>In light of this, we need not reach the statute of limitations as to either his professional negligence or gross negligence claims. *Cf. Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012) (holding that appellate courts may affirm a district court order on different grounds than those used by the district court).

<sup>3</sup>We note that North’s informal brief only addresses the district court’s dismissal of his due process claim and does not address his claim regarding his inalienable rights, thus he has waived any argument as to this issue. *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3.

all factual allegations in North's complaint as true and draw all inferences in his favor. *See id.* at 228, 181 P.3d at 672. We review the district court's legal conclusions de novo. *Id.*

Under Nevada's due process clause, "[n]o person shall be deprived of life, liberty, or property, without due process of law." Nev. Const. art. 1, § 8(2). In his complaint, North alleged that CoreCivic violated his due process rights under Article 1 § 8 when they refused him medical treatment. Although titled as a due process claim, North's allegations were duplicative of North's professional negligence claim and asserted that CoreCivic owed him a duty of care and did not meet this duty when they allegedly refused him medical treatment, without demonstrating how this violated his due process rights. *See Otak Nev., LLC v. Eighth Jud. Dist. Ct.*, 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"); *Stockmeier v. State, Dep't of Corr.*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008) ("Dismissal is proper where the allegations [in the complaint] are insufficient to establish the elements of a claim for relief." (internal quotation marks omitted)).

Although North attempts to expand on this point on appeal and argue that he alleged sufficient facts to demonstrate an inadequate medical care claim resulting in a due process violation, this argument is without merit. A pretrial detainee may raise a claim of deliberate indifference to his medical care under the due process clause of the Fourteenth Amendment. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018); *see also Hernandez v. Bennett-Haron*, 125 Nev. 580, 587, 287 P.3d 305, 310 (2012) (explaining that the Nevada Constitution's Due Process Clause "mirrors" its federal counterpart, and federal authority is persuasive

when performing due process analysis (citing *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 808 n.22, 102 P.3d 41, 48 n.22 (2004))). To establish such a claim, a plaintiff must prove

(i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.


*Gordon*, 888 F.3d at 1125. “Deliberate indifference is a stringent standard of fault, requiring proof that a [state] actor disregarded a known or obvious consequence of his action.” *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974 (9th Cir. 2011) (internal quotation marks omitted). “[T]he standard we apply is even higher than gross negligence—deliberate indifference requires a culpable mental state.” *Id.* “The state actor must recognize[ ] [an] unreasonable risk and actually intend[ ] to expose the plaintiff to such risks without regard to the consequences to the plaintiff.” *Id.* (internal quotation marks omitted). “In other words, the defendant knows that something is going to happen but ignores the risk and exposes [the plaintiff] to it.” *Id.* (internal quotation marks omitted).

Here, as the district court found, North’s allegations in his complaint were vague and conclusory and did not establish how CoreCivic took any action that resulted in a constitutional deprivation. Specifically, North failed to allege that CoreCivic made intentional decisions not to provide him medical care, nor did he allege that they intended to expose

him to an unreasonable risk without regard to the consequences. North's complaint as to this claim alleged that the defendants did not meet the "duty of care owed to inmates," but the "mere lack of due care by a state official" does not "deprive" an individual of life, liberty, or property under the Fourteenth Amendment." *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). Thus, North failed to allege facts demonstrating the existence of each of the elements of this type of claim. Thus, the district court did not err by dismissing North's complaint on the basis that he failed to allege a set of facts that, if true, entitle him to relief against CoreCivic pursuant to the Nevada Constitution. *See Nev. Const. art. 1, § 8.*

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>4</sup>To the extent North raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief in light of the defects with North's complaint.



cc: Hon. Robert W. Lane, District Judge  
David North  
Struck Love Bojanowski & Acedo, PLC  
Dennett Winspear, LLP  
Nye County Clerk