



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY WILLIAMS,
Appellant,
vs.
MGM RESORTS INTERNATIONAL
A/K/A MGM GRAND SPORTSBOOK,
Respondent.

No. 91129-COA

ORDER OF AFFIRMANCE

Timothy Williams appeals from a district court order dismissing the complaint in a contract and tort action. Eighth Judicial District Court, Clark County; Tina Talim, Judge.

Williams commenced the underlying proceeding against respondent MGM Resorts International A/K/A MGM Grand Sportsbook, alleging that he placed wagers with MGM on a boxing match and that the match was ruled a draw resulting in the refund of his wagers. However, Williams further alleged that his favored boxer's opponent should have been disqualified from the match and that he therefore should have won his wagers. Based on those allegations, Williams' operative complaint asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraudulent misrepresentation, unjust enrichment, and violation of the Nevada Deceptive Trade Practices Act.

MGM moved to dismiss Williams' complaint, arguing that the district court lacked subject matter jurisdiction over Williams' claims

because the Nevada Gaming Control Board (GCB) has exclusive jurisdiction over this type of gaming dispute and Williams failed to exhaust his administrative remedies before the GCB. Moreover, MGM asserted that it was not a proper party to this case because it lacked a gaming license and did not operate the sportsbook at the MGM Grand Hotel and Casino where Williams placed his wagers. Lastly, MGM contended that dismissal was warranted pursuant to NRCP 12(b)(5) because Williams' operative complaint did not set forth any viable cause of action. Williams opposed that motion and countermoved to compel discovery.

Without conducting a hearing, the district court entered a written order dismissing Williams' complaint with prejudice for the reasons stated in MGM's motion. Further, the district court denied Williams' countermotion to compel discovery. This appeal followed.

On appeal, Williams does not challenge any of the district court's bases for dismissing his complaint, and we therefore affirm the court's decision in this respect. However, Williams contends that the district court should have dismissed his complaint without prejudice because a dismissal for failure to exhaust administrative remedies is not an adjudication on the merits.

Dismissal with prejudice is generally inappropriate absent an adjudication on the merits. *See Greene v. St. Nicholas Med. Grp.*, No. 88360-COA, 2025 WL 1122346, at *2 (Nev. Ct. App. Apr. 15, 2025) (Order of Affirmance with Instructions) (directing the district court to strike the words "with prejudice" from its dismissal order since the underlying dismissal did not operate as an adjudication on the merits). Here, insofar

as the district court determined that the GCB had exclusive jurisdiction over Williams' claims and that he failed to exhaust his administrative remedies with the GCB, Williams is correct that the determinations, standing alone, were not appropriate bases to dismiss his complaint with prejudice. Indeed, these determinations concerned the district court's subject matter jurisdiction. *See Vaile v. Porsboll*, 128 Nev. 27, 30, 268 P.3d 1272, 1274 (2012) (recognizing that although a statute did not "speak[] explicitly of 'subject matter jurisdiction,' the terms that it does use—'jurisdiction' and 'continuing exclusive jurisdiction'—are simply alternate ways of referring to subject matter jurisdiction"); *see also Deja Vu Showgirls of Las Vegas, LLC v. Nev. Dep't of Tax'n*, 130 Nev. 719, 725, 334 P.3d 392, 397 (2014) (explaining, in the context of a taxpayer's claims for judicial relief, that the district court lacked subject matter jurisdiction over such claims if the taxpayer fails to exhaust administrative remedies). And an involuntary dismissal for lack of jurisdiction does not operate as an adjudication on the merits. NRCP 41(b) (identifying types of involuntary dismissals that do not constitute an adjudication on the merits); *Stalley v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) ("A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.").

However, the district court identified other independent, alternate bases for dismissing Williams' case with prejudice, including his failure to state a claim for which relief can be granted. When a district court dismisses a case on that basis under NRCP 12(b)(5), the dismissal may constitute an adjudication on the merits, such that it would be appropriately

classified as one with prejudice. *See* NRCP 41(b) (omitting NRCP 12(b)(5) dismissals from the list of dismissals that do not operate as an adjudication on the merits); *see also Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 169, 400 P.2d 621, 624 (1965) (“The dismissal of an action for failure to state a claim upon which relief can be granted can result in a judgment on the merits, though usually it will lead only to amendment of the complaint.” (internal quotation marks omitted)); *Lopez v. One Reverse Mortg., LLC*, No. 77084-COA, 2020 WL 2843232, at *3 (Nev. Ct. App. May 29, 2020) (Order Affirming in Part and Reversing in Part) (“[A] court should not dismiss a claim with prejudice [for failure to state a claim] unless it finds that leave to amend would be futile.”).

As mentioned above, Williams does not challenge any of the district court’s grounds for dismissing his case on appeal. Nor does he address whether dismissing his case with prejudice based on his failure to state a viable claim was proper under the circumstances presented here. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that arguments not raised on appeal are deemed forfeited). Thus, because Williams has not successfully challenged all the district court’s independent, alternate bases for dismissing his case with prejudice, he has not demonstrated a basis for relief.¹ *See Hung v. Genting Berhad*, 138 Nev. 547, 549, 513 P.3d 1285, 1287 (Ct. App. 2022)

¹We express no opinion as to whether the doctrines of claim or issue preclusion would preclude Williams from pursuing his administrative remedies or, eventually, a petition for judicial review of a final decision by the GCB, under the circumstances presented here.

("[W]hen a district court provides independent alternate grounds in support of a decision later challenged on appeal, the appellant generally must successfully challenge all of those grounds in its appellate briefing to obtain a reversal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Tina Talim, District Judge
Timothy Williams
Semenza Rickard Law
Eighth District Court Clerk

²Insofar as Williams raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief or need not be addressed in light of our disposition of this appeal.