

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS LAMAR COTTON; WILBUR
LEWIS, JR.; AND ARIES D. MOSBY,
Appellants,
vs.
STATE OF NEVADA, NEVADA
DEPARTMENT OF PRISONS,
Respondent.

No. 39359

FILED

AUG 26 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing appellants' complaint. Eighth Judicial District Court, Clark County; Jeffrey D. Sobel, Judge.

Appellants, Thomas Lamar Cotton, Wilbur Lewis, Jr., and Aries D. Mosby, inmates at High Desert Correctional Center, were injured when a lawn, tractor-type cart in which they were being transported jack-knifed and rolled. Following the accident, appellants filed various grievances with the Department of Prisons requesting, among other things, medical assistance; however, appellants allege that their grievances were either never addressed or summarily denied. Thereafter, appellants filed a complaint in district court seeking damages and asserting causes of action for: (1) negligence, (2) respondeat superior, (3) injunctive relief regarding medical treatment, and (4) injunctive relief regarding work time credits.

Respondent, Nevada Department of Prisons, filed a motion to dismiss pursuant to NRCP 12(b)(5), asserting that appellants failed to state a claim upon which relief could be granted. The district court granted respondent's motion, relying upon NRS 41.0322(1). The district court concluded that, prior to filing their complaint, appellants must have

first exhausted their administrative remedies and have pleaded exhaustion as part of their claim for relief.

On appeal, appellants assert that the district court erred in dismissing their complaint because (1) their complaint gave respondent fair notice of the nature and basis of their claims and of the fact that appellants were alleging that the administrative grievance process was exhausted, and (2) they complied with the statutory condition precedent of NRS 41.0322 to vest subject matter jurisdiction of their claim in the district court. We agree.

The standard of review for dismissal of a complaint is well established. Under NRCP 12(b)(5), we rigorously review a district court's dismissal of an action for failure to state a claim.¹ In so doing, we must construe the pleadings liberally and draw every inference in favor of the non-moving party.² All factual recitations in the complaint must be accepted as true.³ A complaint will not be dismissed pursuant to NRCP 12(b)(5) unless it appears beyond a reasonable doubt that the plaintiff could not have proven a set of facts, which, if true, would entitle him to relief.⁴ "Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief."⁵

¹Kourafas v. Basic Food Flavors, Inc., 120 Nev. ___, ___, 88 P.3d 822, 823 (2004).

²Id.

³Id.

⁴Id.

⁵Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

NRS 41.0322 governs actions by persons in custody of the department of prisons to recover compensation for personal injuries. Subsection 1 of this provision reads:

A person who is or was in the custody of the Department of Corrections may not proceed with any action against the Department or any of its agents, former officers, employees or contractors to recover compensation for the loss of his personal property, property damage, personal injuries or any other claim arising out of a tort pursuant to NRS 41.031 unless the person has exhausted his administrative remedies provided by NRS 209.243 and the regulations adopted pursuant thereto.⁶

Although the district court concluded that appellants had to allege exhaustion as part of their claim for relief, nothing in the text of NRS 41.0322(1) indicates that the district court was correct in its conclusion, as the statute does not specifically require that exhaustion be pleaded. Based on our reading of this provision, we conclude that appellants were not required to plead exhaustion of administrative remedies as part of their claim for relief. Thus, the district court erred in dismissing the complaint on this basis.

With regard to whether the district court had to dismiss for lack of subject matter jurisdiction, we note that generally, failure to exhaust administrative remedies deprives the district court of subject matter jurisdiction.⁷ Further, when there is lack of subject matter jurisdiction on the face of the complaint, a motion to dismiss is properly

⁶NRS 41.0322(1).

⁷Rosequist v. Int'l Ass'n of Firefighters, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002).

granted.⁸ However, in this case, NRS 41.0322(3) gives the district court jurisdiction over actions filed by a person in custody even before the exhaustion of administrative remedies. NRS 41.0322(3) states that “[a]n action filed by a person in accordance with this section before the exhaustion of his administrative remedies must be stayed by the court in which the action is filed until the administrative remedies are exhausted.” According to NRS 41.0322(3), the district court is only required to dismiss an action if the person in custody “has not timely filed his administrative claim pursuant to NRS 209.243.”

Since NRS 41.0322(3) gives the district court the authority to stay the proceeding until administrative remedies are exhausted, we conclude that the exhaustion of administrative remedies is not jurisdictional. The district court would not be empowered to stay proceedings if the requirement to exhaust administrative remedies deprived the district court of jurisdiction.⁹ Thus, the district court was not required to dismiss the complaint on the grounds that it lacked subject matter jurisdiction, as appellants’ action could have remained pending until fulfillment of the administrative requirement.

We note that our review of this matter has been impaired by the district court’s failure to address whether appellants actually exhausted their administrative remedies. Although appellants attached several grievance forms to their opposition to respondent’s motion to

⁸Id.

⁹See Underwood v. Wilson, 151 F.3d 292, 295 (1998) (concluding that § 1997e of the Prison Litigation Reform Act of 1995 requiring exhaustion does not deprive the court of jurisdiction over the action since the court is empowered to screen complaints and dismiss claims).

dismiss, evidencing repeated usage of the administrative grievance system, it appears that the district court did not consider these exhibits in deciding whether to dismiss appellants' complaint. Also, it is not clear whether all the evidence relating to this issue was before the district court. Therefore, a full hearing would have been appropriate for a complete presentation of the facts regarding appellants' exhaustion of administrative remedies and their claims that such exhaustion was made difficult.¹⁰ In particular, the district court could have evaluated whether appellants timely filed an administrative claim within six months after the date of their alleged injuries pursuant to NRS 203.243, and, if not, whether failure to file an administrative claim effectively barred the filing of their action.¹¹ Once the district court had resolved all factual disputes and made its ruling, setting forth the basis for its disposition in findings of fact and conclusions of law, we could have then appropriately reviewed this matter.

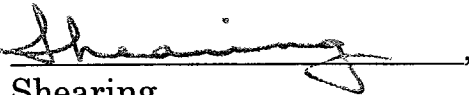
Having concluded that the district court erred in dismissing appellants' complaint, we reverse the judgment of the district court and remand this matter to the district court with instructions to reinstate appellants' complaint and to conduct an evidentiary hearing to determine

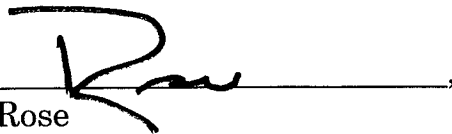
¹⁰Cf. Engelmann v. Westergard, 98 Nev. 348, 353, 647 P.2d 348, 388-89 (1982) (observing that where one has not enjoyed a fair opportunity to exhaust the administrative process, or where resort to administrative procedures would be futile, exhaustion of administrative remedies is not required).

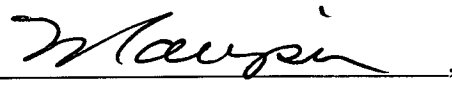
¹¹Cf. Turner v. Staggs, 89 Nev. 230, 235-36, 510 P.2d 879, 883 (1973) (holding that a six-months claim statute was invalid with respect to tort claims against governmental entities on the basis of equal protection).

if appellants have exhausted their administrative remedies, and if not, to allow exhaustion of their administrative remedies if appropriate.

It is so ORDERED.


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Maupin

cc: Eighth Judicial District Court Dept. 5, District Judge
Potter Law Offices
Attorney General Brian Sandoval
Clark County Clerk