

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE A. TOLIVER,  
Appellant,  
vs.  
JEFF MAY; AND NEVADA DIVISION  
OF FORESTRY,  
Respondents.

No. 41010

**FILED**

APR 21 2006

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

ORDER OF AFFIRMANCE

This is proper person appeal from a district court order dismissing a tort action. First Judicial District Court, Carson City; William A. Maddox, Judge.

Respondent Nevada Division of Forestry contracts with the Nevada Department of Corrections to utilize inmate labor crews for conservation work in the community. Respondent Jeff May, an employee of the Division of Forestry, supervised one of these labor crews, which included appellant George Toliver. Toliver instituted the underlying action primarily based on alleged racial discrimination he endured as a member of this labor crew.

Shortly after instituting the underlying action, and before either May or the Division of Forestry had responded, Toliver requested that the district court enter a default judgment against them, under NRCP 55(b)(2). Thereafter, without filing an answer, May and the Division of Forestry filed a motion to dismiss the action based on Toliver's failure to state a claim, to properly serve the complaint, and to exhaust his administrative remedies. They further moved the court to deny Toliver's request for an entry of default. In response, Toliver conceded that he had

not exhausted his administrative remedies and requested that the district court proceedings be stayed while he pursued them. Toliver then concurrently filed a motion for leave to amend his complaint, an amended complaint, and another response to the motion to dismiss. The district court subsequently entered an order dismissing the action as to the Division of Forestry, for failing to properly serve the complaint, and as to May, based on Toliver's failure to exhaust his administrative remedies prior to filing the action. The order also denied Toliver's pending motions.<sup>1</sup> Toliver appeals.

To the extent that the district court dismissed the action against the Division of Forestry for Toliver's failure to properly serve the complaint, we conclude that dismissal of the action was proper. Under NRS 41.031(2), a summons and a copy of the complaint brought against a political subdivision of Nevada must be served on the Attorney General and the head of the specified agency. This must occur within 120 days from the time when Toliver instituted the action.<sup>2</sup> Here, Toliver served neither the Attorney General nor the head of the Division of Forestry with either document.<sup>3</sup> Because an "action shall be dismissed as to th[e] defendant" for the failure to timely serve the summons and a copy of the

---

<sup>1</sup>Although the court's order failed to specify the ground for denying Toliver's request for a default judgment, our review of the record indicates that Toliver filed his request prematurely; the applicable time limit for responding to his complaint had not run. See NRCP 12(a)(3).

<sup>2</sup>See NRCP 4(i).

<sup>3</sup>We note that, although May's and the Division of Forestry's motion to dismiss, filed before the 120-day time limit for service had run, specifies the date on which this time limit would run, Toliver apparently made no subsequent attempt to cure the procedural deficiency.

complaint, the district court did not err when it dismissed Toliver's action against the Division of Forestry.<sup>4</sup>

With respect to the district court's dismissal of Toliver's action against May in his individual capacity, we conclude that the district court reached the correct result, albeit for the wrong reason.<sup>5</sup> Ostensibly, the court dismissed the action against May based on Toliver's failure "to comply with NRS 41.0322 prior to commencing" the action. NRS 41.0322(1) provides that an inmate "may not proceed with any action" for personal injury against a contractor with the Department of Corrections, "unless the [inmate] has exhausted his administrative remedies." The statute does not authorize the court to dismiss an action for an inmate's failure to exhaust his administrative remedies prior to commencing the action, but merely provides that an action may not proceed before an inmate's administrative remedies are exhausted. Indeed, Toliver requested a stay of the proceedings to afford him time to pursue and exhaust his administrative remedies. Thus, based on these circumstances, NRS 41.0322 did not bar Toliver's action.

Nevertheless, Toliver, in his complaint, to constitute a cognizable claim for relief, must have set forth allegations sufficient to make a claim, providing fair notice of the nature and basis of the claim and the relief requested.<sup>6</sup>

---

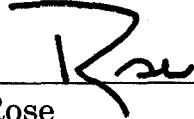
<sup>4</sup>See NRCP 4(i).

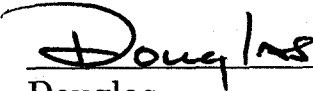
<sup>5</sup>See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (stating that this court may affirm rulings of the district court on grounds different from those relied upon below).

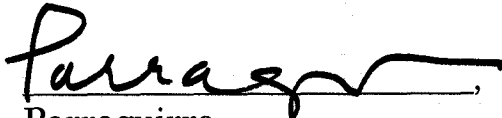
<sup>6</sup>See Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

Having reviewed the record, including Toliver's complaint and supplemental pleadings, we conclude that he failed to set forth allegations sufficient to entitle him to relief. Assuming, as we must, the truth of his factual allegations,<sup>7</sup> and even under the more lenient standard to which Toliver asserts proper person litigants are entitled,<sup>8</sup> his conclusory allegations do not, as a matter of law, amount to a viable claim on which to grant relief. Accordingly, the district court's dismissal as to May was likewise proper, and thus we affirm the district court's order dismissing Toliver's action.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. William A. Maddox, District Judge  
George A. Toliver  
Attorney General George Chanos/Carson City  
Carson City Clerk

---

<sup>7</sup>See generally Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

<sup>8</sup>See e.g., Boag v. MacDougall, 454 U.S. 364, 365 (1982) (reminding federal courts to liberally construe the inartful pleadings of proper person litigants), citing Haines v. Kerner, 404 U.S. 519 (1972).