

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD L. MILBOURN,
Appellant,
vs.
TWO UNKNOWN NAMED
PARTIES, EXCEPT BY LAST
NAMES, SMITT AND SNOW,
EMPLOYEES OF THE ELY
STATE PRISON,
Respondents.

No. 41219

FILED

JUN 04 2003

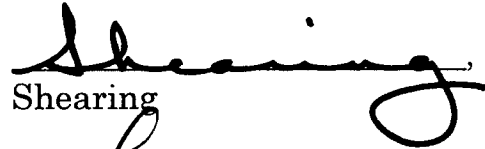
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CLERK OF SUPREME COURT
BY *J. Richards*
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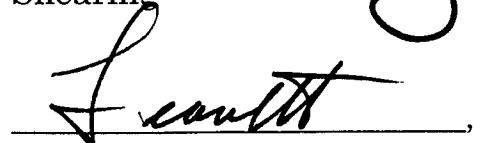
ORDER OF AFFIRMANCE

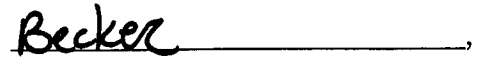
This is a proper person appeal from a district court order dismissing appellant's complaint for failure to state a claim upon which relief can be granted, pursuant to NRCP 12(b)(5). Having reviewed the record in this matter, we conclude that the district court properly

dismissed the complaint.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

 J.
Shearing

 J.
Leavitt

 J.
Becker

¹See Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (holding that on review of an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief); NRCP 12(b)(5); see also NRS 41.0322(1) (stating that a prisoner must exhaust administrative remedies before filing any action against the department or any of its employees to recover damages for loss of his personal property arising out of a tort); NRS 209.243(1) (providing that a prisoner may file an administrative claim with the department to recover compensation for loss of personal property arising out of a tort alleged to have occurred during his incarceration as a result of an act of a department employee); NRCP 12(a)(3) (stating that the State of Nevada and any employee "shall file an answer or other responsive pleading within 45 days after their respective dates of service").

²Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

cc: Hon. Dan L. Papez, District Judge
Attorney General Brian Sandoval/Carson City
Richard L. Milbourn
White Pine County Clerk