

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. METZ,  
Appellant,

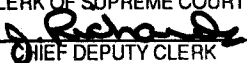
vs.

NEVADA DIVISION OF INSURANCE,  
AND ALICE A. MOLASKY-ARMAN,  
COMMISSIONER OF INSURANCE,  
Respondents.

No. 42492

**FILED**

APR 19 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a complaint for civil damages. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In February 2003, respondent Alice A. Molasky-Arman (the Nevada Commissioner of Insurance) rendered an administrative decision revoking appellant Robert B. Metz's bail agent license and imposing an administrative fine, in proceedings commenced by respondent Nevada Division of Insurance. Metz filed a district court petition for judicial review of the administrative decision, raising due process issues concerning bias, confidentiality, and the intentional violation of Nevada Revised Statutes and Nevada Administrative Code procedures. Thereafter, in September 2003, Metz filed a district court complaint against the Division of Insurance and the Commissioner. In his complaint, Metz raised issues nearly identical to those raised in his petition for judicial review.

The Division and the Commissioner moved to dismiss Metz's complaint for failure to state a claim, arguing that (1) there exists no right

to sue for money damages based on alleged violations of Nevada's Constitution or administrative procedure; (2) under Nevada's Administrative Procedure Act (APA),<sup>1</sup> the proper and only method for challenging the administrative process is through a petition for judicial review; and (3) absolute quasi-judicial immunity applies to bar the claims against the Commissioner. Metz opposed the motion and filed an amended complaint containing claims similar to those in his original complaint, but additionally alleging that the Commissioner had allowed staff to falsify evidence and to conceal contradictory evidence and witness statements implicating "the real persons" who had committed improper acts.

Subsequently, the district court granted the motion to dismiss Metz's original complaint with prejudice, determining that Metz's claims, which were related to the administrative bail agent license proceedings, could only be adjudicated within the context of a petition for judicial review of the administrative decision, and that the Commissioner was immune from suit. Metz appeals.

Preliminarily, we note that although the motion to dismiss was addressed only to the original complaint, Metz's amended complaint contained similar claims of misconduct concerning the administrative proceedings. Consequently, respondents' arguments regarding immunity and APA preemption apply equally to it, and we construe the district

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<sup>1</sup>NRS Chapter 233B; see also NRS 679B.370(2) (providing that the APA applies to petitions for judicial review from administrative insurance commission decisions).

court's order as dismissing the entire action. As a result, we have jurisdiction over this appeal from the district court's final judgment.<sup>2</sup>

This court rigorously reviews the dismissal of an action under NRCP 12(b)(5) for failure to state a claim.<sup>3</sup> A complaint should only be dismissed if it appears beyond a reasonable doubt that the plaintiff could prove no facts entitling him to relief. Thus, "[d]ismissal is proper where the allegations are insufficient to establish the elements of a claim for relief."<sup>4</sup> Here, the district court determined that Metz's complaint should be dismissed because the Commissioner was entitled to absolute immunity and because Metz's allegations were preempted by the APA, since they concerned administrative proceedings. We agree.

NRS 233B.130(6) provides that the APA's provisions "are the exclusive means of judicial review of, or judicial action concerning, a final decision in a contested case involving an agency to which this chapter applies." In addition, subsection (1) of that provision allows the court to review "[a]ny preliminary, procedural or intermediate act or ruling by an agency . . . if review of the final decision of the agency would not provide an adequate remedy."<sup>5</sup> While the district court may accept evidence of procedural irregularities in an APA proceeding, it may only reverse, remand, affirm, or set aside the final decision; the APA does not provide for the award of monetary damages.<sup>6</sup>

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<sup>2</sup>See NRAP 3A(b)(1).

<sup>3</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

<sup>4</sup>Id.

<sup>5</sup>NRS 233B.130(1)(b).

<sup>6</sup>See NRS 233B.135.

In addition, persons who perform functions integral to the judicial process are entitled to absolute quasi-judicial immunity.<sup>7</sup> Although this court has not specifically addressed quasi-judicial immunity with respect to the Commissioner, we have previously recognized that absolute quasi-judicial immunity extends to various persons acting in certain official capacities, including “administrative law judges, hearing examiners and agency officials.”<sup>8</sup> Thus, the Commissioner is entitled to absolute judicial immunity for acts taken within her quasi-judicial functions.<sup>9</sup>

For the most part, Metz’s allegations are intertwined with the administrative decision, and thus they are remediable only under the APA. For example, Metz alleged that the Commissioner acted in a quasi-judicial capacity despite conflicts of interest, improperly held a hearing when Metz was unable to attend, and/or allowed evidence concealment or tampering. To the extent that those actions caused adverse findings or a violation of due process by which Metz was aggrieved, they are properly challenged in a petition for judicial review.<sup>10</sup>

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<sup>7</sup>State of Nevada v. Dist. Ct. (Ducharm), 118 Nev. 609, 616, 55 P.3d 420, 424 (2002).

<sup>8</sup>Id.

<sup>9</sup>Although the district court’s order cites to NRS 1.465, which governs the commission on judicial discipline’s immunity and does not appear to apply to other agency officials, the district court properly recognized that the Commissioner was entitled to immunity.

<sup>10</sup>See NRS 233B.135 (providing bases on which the district court may overturn administrative decisions).

Further, while Metz claims that respondents violated his civil rights under the Nevada Constitution and statutes, he provides no factual basis on which this claim is made and mentions no specific right that was allegedly violated. Whether or not Nevada recognizes a private person's right to sue for monetary damages for constitutional violations, Metz did not adequately allege any constitutional violations that were "unconcerned" with the administrative decision, and as a result, those allegations are subsumed within the administrative proceedings.<sup>11</sup> Accordingly, Metz alleged no separate cause of action here.

Moreover, the actions alleged by Metz were clearly within the Commissioner's quasi-judicial functions; accordingly, she is entitled to immunity.<sup>12</sup> With regard to Metz's release of confidential information claim, to the extent that Metz alleged that the Commissioner acted outside her quasi-judicial capacity when she disclosed or intentionally allowed others to disclose information throughout the course of the administrative proceedings, he has stated no cognizable claim for relief.<sup>13</sup>

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<sup>11</sup>See NRS 233B.130(6).

<sup>12</sup>See NRS 679B.360(1) ("In the conduct of hearings under this Code and making h[er] order thereon, the Commissioner shall act in a quasi-judicial capacity.").

<sup>13</sup>Cf. NRS 679B.287 (contemplating the possibility that the Commissioner could be sued for the recovery of damages in an action for "libel, slander, or any other relevant tort," but imparting no basis for liability therefore); Executive Mgmt. v. Tigor Title Ins. Co., 114 Nev. 823, 841, 963 P.2d 465, 477 (1998) (recognizing that a claim for breach of a confidential relationship may be established, in part, only when a special equitable-type of confidential relationship and reliance thereon exist, such as a relationship between a buyer and seller who do not negotiate at arms length); Bemis v. Estate of Bemis, 114 Nev. 1021, 1027, 967 P.2d 437, 442 (1998) (recognizing that a confidential relationship exists between a father

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Accordingly, we affirm the district court order dismissing Metz's action against the Division and the Commissioner.

It is so ORDERED.

Douglas, J.  
Douglas

Becker, J.  
Becker

Parraguirre, J.  
Parraguirre

cc: Hon. Brent T. Adams, District Judge  
Robert B. Metz  
Attorney General George Chanos/Carson City  
Washoe District Court Clerk

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and his children); Kaldi v. Famers Ins. Exch., 117 Nev. 273, 283-84, 21 P.3d 16, 23 (2001) (recognizing the elements of a claim for misappropriation of trade secrets). In so deciding, we make no conclusions regarding the availability of an immunity defense with regard to claims concerning the release of confidential information.