

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL CRUZ SARINANA,
Appellant,
vs.
THE STATE OF NEVADA EX REL
BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 48804

FILED

OCT 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court order dismissing a complaint that alleged open meeting law violations with respect to a parole board hearing. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

Below, appellant Miguel Cruz Sarinana filed a complaint for declaratory relief, asserting that respondent Nevada Board of Parole Commissioners violated Nevada's open meeting law, NRS Chapter 241, in connection with his parole hearing on October 10, 2006, and that, therefore, the Board's action should be declared void. After reviewing Sarinana's complaint, however, the district court sua sponte dismissed it without prejudice, noting that this court had issued a stay in another case involving a similar issue. Sarinana has appealed, asserting that the district court improperly sua sponte dismissed his complaint based on irrelevant actions of this court, without any authority to do so.

The district court has authority to sua sponte dismiss a complaint that lacks an arguable factual or legal basis,¹ or that fails to state a claim upon which relief can be granted.² Sua sponte dismissals generally are discouraged,³ however, and before taking such action, the court is usually required to provide the plaintiff with notice and an opportunity to oppose dismissal.⁴

Here, the district court failed to provide Sarinana with notice and opportunity to oppose dismissal, and it improperly dismissed his complaint based on an unpublished order of this court in an unrelated and unresolved matter. In so doing, the court unfairly deprived Sarinana of any opportunity that he might have had to challenge any open meeting law violations with respect to the October 2006 parole board hearing, as suits to declare a public body's action void must be filed within sixty days of the action.⁵

¹Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 56, 58, 110 P.3d 30, 40, 41 (2005) (discussing sua sponte dismissals of frivolous complaints under NRCP 11).

²See, e.g., Pino v. Ryan, 49 F.3d 51, 54 (2d Cir. 1995) (discussing sua sponte dismissals under 28 U.S.C. § 1915(d) and stating that even given the leniency with which pro se litigants' complaints are treated, district courts are not obliged to retain complaints that rely on an "indisputably meritless legal theory" (internal quotation omitted)); Huckeby v. Spangler, 521 S.W.2d 568, 571 (Tenn. 1975) (discussing sua sponte dismissals of complaints that fail to state a claim upon which relief can be granted under the Tennessee equivalent of NRCP 12).

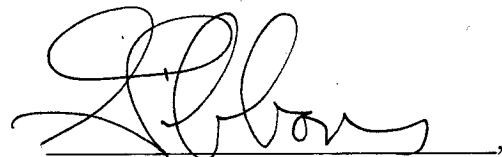
³Id.

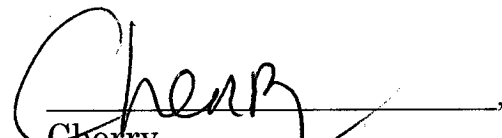
⁴Jordan, 121 Nev. at 56, 110 P.3d at 40.

⁵NRS 241.037(3).

Even when the district court has based its decision on incorrect reasoning, however, we will affirm the court's order if it reaches the right result.⁶ As a matter of law, Sarinana cannot challenge any open meeting law violations with respect to the October 2006 parole board hearing, because the parole board is a quasi-judicial body exempt from the open meeting law's purview.⁷ Accordingly, his complaint failed to state a claim upon which relief could be granted, and it was therefore appropriately dismissed.⁸ As a result, we affirm the district court's order.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

⁶Barry v. Lindner, 119 Nev. 661, 670 n.14, 81 P.3d 537, 543 n.14 (2003).

⁷Wetherow v. State, Bd. of Parole Comm'rs, 123 Nev. ___, ___ P.3d ___ (2007) (Adv. Op. No. 33, September 20, 2007).

⁸See Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (recognizing that a complaint must be dismissed under NRCP 12(b)(5) for failure to state a claim when, after liberally construing a complaint's factual allegations and drawing every fair inference in favor of the plaintiff, the plaintiff could prove no set of facts that, if accepted as true, would entitle him to relief); see also Pino, 49 F.3d at 54; Huckeby, 521 S.W.2d at 571 (providing that a district court may properly, albeit rarely, sua sponte dismiss a complaint that fails to state a claim).

cc: First Judicial District Court Dept. 1, District Judge
Miguel Cruz Sarinana
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk