

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SILVERSTEIN, AN
INDIVIDUAL,
Appellant,
vs.
HARRAH'S ENTERTAINMENT, INC., A
DELAWARE CORPORATION,
Respondent.

No. 56163

FILED

DEC 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a civil action for lack of subject matter jurisdiction. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In the district court, respondent filed a motion to dismiss the underlying action on the grounds that the district court lacked subject matter jurisdiction, NRCP 12(b)(1), and that appellant failed to state a claim for relief. NRCP 12(b)(5). After conducting a hearing on the motion, during which the district court considered both of respondent's arguments, the district court entered a written order dismissing the complaint under NRS 12(b)(1), concluding that the Nevada Gaming Control Board had jurisdiction to entertain appellant's claims, and thus, he had failed to exhaust his administrative remedies under NRS 463.362. But NRS 463.362 sets forth dispute resolution procedures concerning recovery of gaming debts by a patron, and this matter does not concern an alleged gaming debt. Rather, appellant was merely excluded from respondent's western region properties, and NRS Chapter 463 contains no remedies for

a person's exclusion from the property of a gaming company. Thus, there are no administrative remedies available to appellant, and the district court had jurisdiction to entertain appellant's claims under NRS 30.030.

Nevertheless, dismissal was the proper result in this matter because appellant failed to state a claim for which relief can be granted in this matter. Although the district court's written order is based solely on NRCP 12(b)(1), respondent's argument under NRCP 12(b)(5) for failure to state a claim was fully briefed and considered by the district court. A complaint should be dismissed if it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. NRCP 12(b)(5); Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). Here, appellant filed a complaint seeking declaratory relief under NRS 463.0129(1)(e), which he asserted codified the common law right of access.


Contrary to appellant's contentions, NRS 463.0129(1)(e) does not create a statutory individual right of access to the property of a gaming company. Instead, the statute specifies that gaming establishments must remain open to the general public and that access of the general public must not be restricted in any manner except as provided by the Legislature. Id. Appellant's claim, that he has been individually excluded, does not implicate this mandate. Id. Thus, as pleaded, appellant's complaint fails to state a claim for relief and was properly dismissed. Buzz Stew, 124 Nev. at 228, 181 P.3d at 672; see also Spilotro v. State ex rel. Gaming Comm'n, 99 Nev. 187, 194, 661 P.2d 467, 471-72 (1983) ("Appellant does not have a constitutional right of access to businesses, such as casinos, that are generally open to the public."); see Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) ("[T]his

court will affirm the order of the district court if it reached the correct result, albeit for different reasons.”).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jackie Glass, District Judge
Bill C. Hammer, Settlement Judge
William E. Cooper Law Offices
Santoro, Driggs, Walch, Kearney, Holley & Thompson/Las Vegas
Eighth District Court Clerk