

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROY DANIELS MORAGA,
Appellant,
vs.
WILLIAM BEE RIRIE HOSPITAL,
Respondent.

No. 74576

FILED

JUL 27 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Roy Daniels Moraga appeals from a district court order dismissing his complaint in a tort action. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Moraga, an inmate, sued respondent William Bee Ririe Hospital (WBRH), alleging that he visited WBRH for medical tests and received diagnoses; that he received a conflicting diagnosis from a doctor at the Nevada Department of Corrections; that somebody therefore provided him an inadequate, false, or deliberately inaccurate diagnosis; and that his medical condition worsened as a result. WBRH moved for dismissal arguing that, although Moraga presented a claim for professional negligence, he failed to support it by attaching the necessary medical expert affidavit to his complaint. *See* NRS 41A.071 (providing that the district court shall dismiss a professional negligence action that is not supported by a medical expert affidavit); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (holding that a complaint that does not comply with NRS 41A.071 is void ab initio and has no force or effect). Over Moraga's opposition, the district court dismissed his complaint, concluding that it presented a claim for professional negligence and that it was unsupported by the required medical expert affidavit.

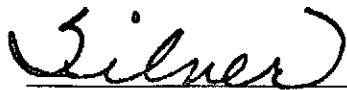
18-901638


On appeal, Moraga does not dispute that he sued for professional negligence or that he failed to attach a medical expert affidavit as required by NRS 41A.071. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Instead, Moraga argues that dismissal was inappropriate here because he submitted his complaint to the Nevada State Board of Medical Examiners, which determined that it lacked jurisdiction to investigate the matter. But the medical expert affidavit requirement is a statutory prerequisite to this type of professional negligence action, *see Washoe Med. Ctr.*, 122 Nev. at 1303-04, 148 P.3d at 793-94 (reasoning that the medical expert affidavit requirement is mandatory), and no legal authority in Nevada authorized Moraga to use the procedure that he attempted to employ here as a substitute for attaching a medical expert affidavit to his complaint. Likewise, Nevada law did not require the Board to provide Moraga with a medical expert affidavit. *See* NRS 630.003(1) (explaining the legislature's purpose in creating the Board); NRS 630.130-.146 (setting forth the powers and duties of the Board).

And to the extent that Moraga disputes whether he was required to comply with NRS 41A.071 based on his status as an inmate and his education level, his challenge fails as neither his incarceration nor his education level excused him from complying with the medical expert affidavit requirement. *Cf. Peck v. Zipf*, 133 Nev. ___, ___, 407 P.3d 775, 781-82 (2017) (rejecting an inmate's due process and equal protection challenges to NRS 41A.071, reasoning that, among other things, the inmate's access to the courts was reasonably unfettered despite the medical expert affidavit requirement); *Lombardi v. Citizens Nat'l Tr. & Sav. Bank of L.A.*, 289 P.2d 823, 824 (Cal. Dist. Ct. App. 1955) (explaining that litigants proceeding pro

se must be restricted to the same procedural rules as parties proceeding through attorneys). Thus, given the foregoing, we conclude that Moraga failed to demonstrate that the district court erred in dismissing his complaint for failure to comply with NRS 41A.071.¹ See *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court*, 132 Nev. ___, ___, 376 P.3d 167, 170 (2016) (reviewing a district court order resolving an NRS 41A.071 motion to dismiss de novo). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
Roy Daniels Moraga
Lemons, Grundy & Eisenberg
White Pine County Clerk

¹Although Moraga argues that the district court improperly dismissed his complaint without ruling on certain pending motions, relief is unwarranted, as those motions were impliedly denied when the court entered its dismissal order, see *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (explaining that the district court's failure to rule on a motion constitutes a denial of the motion), and Moraga does not present any argument to challenge their implicit denial.

²Insofar as Moraga presents arguments with regard to the merits of his professional negligence claim we need not consider his arguments given our disposition of his appeal. For the same reason, we do not address Moraga's requests that he be appointed counsel and that this matter be remanded to the district court for discovery.