IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REGINALD BINGHAM,
Appellant,
vs.
STATE OF NEVADA, PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF NEVADA,
Respondent.

No. 83353-COA

FILED

MAY 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Reginald Bingham appeals from a district court order granting a motion to dismiss a petition for a writ of mandamus. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Bingham worked for City of Las Vegas until 2010.[1] In 2012, he contacted the Public Employees' Retirement System of Nevada (PERS) and asked if he qualified for PERS-based disability retirement benefits. PERS informed Bingham that he did not qualify because he had not applied for those benefits while still employed with a PERS-eligible public employer. Bingham administratively appealed this determination, but the PERS Board (Board) affirmed the decision.

Bingham then filed a petition for a writ of mandamus with the district court, which it denied. He appealed, claiming that PERS did not properly notify him that he had to seek disability retirement benefits while still employed. Accordingly, he argued that PERS should have exercised its equitable powers under NRS 286.190(3) to nonetheless grant him the benefits for which he had untimely applied. We affirmed the district court order, however, and held that Bingham's request for benefits was untimely

[1]We recount the facts only as necessary for our disposition.

and he failed to demonstrate "error or inequity" as contemplated by NRS 286.190(3) because he did not allege detrimental reliance on an erroneous statement by PERS[2] or mental incapacity.

In 2020, Bingham discovered that the Chief Financial Officer (CFO) for City of Las Vegas had participated in his 2015 hearing. He consequently contacted PERS via letter several times that year. In those letters, he explained that he believed (1) PERS has authority under NRS 286.190 to grant him benefits despite the case already being litigated, (2) PERS regulations permitted one reconsideration of a previous decision regarding benefits after presenting new evidence, and (3) the CFO's participation in his case created a conflict that qualified as new evidence warranting reconsideration. PERS responded via letter that while Bingham was entitled to one request for reconsideration, NRS 286.630(4) required that he make such a request within 45 days of the Board's initial denial of benefits. Because his request came five years later, PERS stated, Bingham did not timely seek reconsideration. Bingham again requested a hearing in January 2021 based on the same grounds. PERS did not respond.

Bingham subsequently filed a petition for a writ of mandamus with the district court. PERS moved to dismiss the case on various grounds. The court granted that motion, holding that Bingham failed to timely seek reconsideration of the Board's denial within 45 days as required under NRS 286.630(4).[3] This appeal followed.

---

[2]*See Bingham v. Pub. Emps.' Ret. Sys. of Nev.*, No. 69927, 2017 WL 639407, at *1-2 (Nev. Ct. App. Feb. 10, 2017) (Order of Affirmance).

[3]That provision reads:

Bingham argues that PERS manifestly abused its discretion when it ignored his requests for a new hearing based on his recent discovery of the CFO of City of Las Vegas's participation in his 2015 hearing. According to him, the CFO's participation created an ethical conflict of interest under NRS 281A.420. He also claims that PERS regulations granted PERS discretion to hold a hearing on any request from any member at any time, outside of any time limitations. Because, Bingham claims, he presented a conflict of interest that occurred during his 2015 hearing that he only discovered in 2020, he asked the district court for a new hearing, not a rehearing, and PERS's failure to grant him a new hearing constituted a manifest abuse of discretion.

On appeal, we normally review a district court's decision to deny mandamus relief for an abuse of discretion. *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006). But we review de novo a district court's order granting a motion to dismiss," subjecting it to "rigorous appellate review." *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011).

A district court can properly dismiss a case based upon a statutory time bar when the facts giving rise to the defense appear within the complaint. *See Kellar v. Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971) ("When the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper."). In Bingham's petition for

---

> A member may apply to the Board for one reconsideration within 45 days after the denial by the Board of the member's application, if the member can present new evidence which was not available or the existence of which was not known to the member at the time the Board originally considered the member's application.

a writ of mandamus, he alleged facts that show he sought the Board's reconsideration of his disability retirement claim too late. Bingham noted that he first sought disability retirement benefits in 2015 and that PERS denied that request the same year. Bingham also noted that he had filed a petition for judicial review of that decision,[1] which the district court denied and we affirmed. Finally, he noted that in 2020 he discovered that the CFO of City of Las Vegas—his former employer—participated in his 2015 hearing.

As the district court correctly determined, PERS could only grant Bingham one reconsideration of his disability retirement benefits claim. *See* NRS 286.630(4); NAC 286.430(3). And Bingham had to specifically request that reconsideration "within 45 days after the denial by the Board." NRS 286.630(4); *see* NAC 286.440(1). As he admitted in his petition, the Board denied his claim in 2015, and he did not formally request reconsideration of his claim until 2020. Because Bingham's request for reconsideration under the statute came five years after the statutory time bar had expired, the district court properly dismissed his petition with prejudice.

But Bingham argues that the time bar does not apply to him. He claims that he did not request that the Board reconsider his disability retirement benefits claim. Instead, he suggests that he requested a *new* hearing, a conflict-free one, based on PERS's equitable powers under NRS

---

[1]Bingham refers to this as a petition for judicial review. However, for reasons unknown, the parties agreed to convert this petition for judicial review into a petition for writ of mandamus. This court noted that conversion when Bingham challenged on appeal the district court's resolution of the merits of that case, and we reviewed on appeal Bingham's petition as one for a writ of mandamus.

286.190. But we will not hear arguments regarding errors that Bingham himself induced either PERS or the district court to commit. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court *or the opposite party* to commit." (quoting 5 AM. JUR. 2D *Appeal and Errors* § 713 (1962) (emphasis added))).

And Bingham induced this alleged error. In his correspondence with PERS, Bingham expressly represented that he wanted the opportunity to present "arguments and mitigating factors" regarding his initial disability retirement application. After PERS told Bingham that a reconsideration request was time barred, Bingham responded that his "review of the PERS general regulations indicate[] that a party has a right to one reconsideration upon the presentation of new evidence which was not known or available at the time." Bingham explained that the CFO's participation in his 2015 hearing constituted new evidence that he only recently discovered in 2020 entitling him to that reconsideration. Bingham sent another letter to a different PERS Board member arguing that the CFO's participation entitled him to a reconsideration. At no point did Bingham contest the Board's characterization of his request as one for reconsideration. Instead, he adopted that characterization.

Thus, despite Bingham's attempt to recharacterize his request as one for a "new hearing," he invited both PERS and the district court to view it as a request for reconsideration. He referred repeatedly to it as a reconsideration, cited authority governing reconsiderations, argued that his circumstances entitled him to a reconsideration under that authority, and never contested PERS's characterization of his request as one for a

reconsideration. Moreover, despite Bingham's attempt to characterize his request as a "new hearing," he openly acknowledges that the purpose for a new hearing would be to have "[his] matter heard, again, by the PERS Board." In other words, Bingham wishes for PERS to determine whether he can receive disability retirement benefits. Labels aside, there is virtually no distinction, then, between Bingham's request for a new hearing and a request for reconsideration. In either case, PERS would be hearing Bingham's initial disability retirement claim that has already been litigated to its finality—as he concedes—on its merits.[5]

Even if the statutory time bar did not proscribe Bingham's claim, his petition for mandamus relief still must fail. This court may affirm a district court order if the court reached the right conclusion but used the wrong reasoning. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010); *see also Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 923, 605 P.2d 196, 197 (1979) ("[I]t is well established that the court will affirm the holding of the lower court if it is supported by any of the other theories presented."). In reviewing a district court order granting a motion to dismiss, "[t]his court's 'task is to determine whether . . . the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.'" *Breliant v. Preferred Equities*

---

[5]Otherwise, Bingham could bypass NRS 286.630(4), NAC 286.430(3), and NAC 286.440(1), leading to absurd results—the kind we avoid. *See In re CityCenter Constr. & Lien Master Litig.*, 129 Nev. 669, 677, 310 P.3d 574, 580 (2013) ("We interpret statutes to conform[ ] to reason and public policy. In so doing, we avoid interpretations that lead to absurd results. Whenever possible, [we] will interpret a rule or statute in harmony with other rules or statutes." (internal citations and quotation marks omitted)).

Corp., 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (quoting *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985)).

But writ relief is extraordinary relief. *Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 639, 289 P.3d 201, 204 (2012). So Bingham had to demonstrate that PERS either (1) had a "clear, present legal duty to act," *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981), or (2) manifestly abused its discretion by acting arbitrarily and capriciously, *McNamee v. Eighth Judicial Dist. Court*, 135 Nev. 392, 394, 450 P.3d 906, 908 (2019). To show that PERS manifestly abused its discretion, Bingham had to show clear error in how PERS interpreted or applied the law. *State, Office of the Att'y Gen. v. Justice Court of Las Vegas Twp.*, 133 Nev. 78, 80, 392 P.3d 170, 172 (2017). In other words, he had to show that PERS committed more than a "mere error in judgment," *Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 680, 476 P.3d 1194, 1197 (2020); instead, he had to show that PERS denied or ignored his claim based on "prejudice or preference rather than reason," *McNamee*, 135 Nev. at 397, 450 P.3d at 910, or partiality, bias, or ill will, *Walker*, 136 Nev. at 681, 476 P.3d at 1197.

Bingham failed to show he was entitled to mandamus relief. He concedes in his petition and on appeal that he is not *entitled* to—and PERS was thus not required to grant—the disability retirement benefits he wants or a reconsideration, rehearing, or new hearing on those claims. Nor has Bingham shown that PERS manifestly abused its discretion in denying him a hearing. Indeed, as mentioned, Bingham admits he is not entitled to the

benefits he would seek at any such hearing. And while PERS *may*[6] have the discretion to grant the hearing Bingham seeks under NRS 286.190, it only had that discretion if Bingham showed some error or inequity. *See* NRS 286.190(3) (stating the PERS Board may "[a]djust the service or correct the records, allowance or benefits of any member, retired employee or beneficiary *after* an error or inequity has been determined" (emphasis added)). Yet the only "error or inequity" that Bingham has ever offered this court or PERS as to why he untimely filed his application has already been rejected by this court.[7] *See Bingham v. Pub. Emps.' Ret. Sys. of Nev.*, No.

---

[6]We need not decide whether NRS 286.190(3) permits PERS to grant Bingham the relief that he seeks because, even if it did, Bingham failed to show he was entitled to such relief. *See Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that courts need not address issues that are unnecessary to resolve the case at bar).

[7]Given our disposition, we need not consider Bingham's other claims. *Miller*, 124 Nev. at 588-89 & n.26, 188 P.3d at 118-19 & n.26. However, to the extent that Bingham claims that the alleged conflict of interest constitutes an "error or inequity" which would *permit*—but not require—PERS to exercise its equitable powers to disregard a statutory time bar and hold a new hearing on his claim, he has provided no authority showing PERS has equitable authority to correct a potential defect divorced from his actual application. Even if he had, he has not cogently argued that point, and we will not supply this argument for him. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority); *see also Senjab v. Alhulaibi*, 137 Nev., Adv. Op. 64, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present."). Furthermore, Bingham failed to show that any actual conflict of interest existed that would have required the CFO of City of Las Vegas to recuse himself or that would have affected his substantial rights. *McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495–96 (2016) (placing the burden on movants in the civil context to show (1) error and (2) that it affected their substantial rights). Finally, Bingham failed to

69927, 2017 WL 639407, *1-2 (Nev. Ct. App. Feb. 10, 2017) (holding that there was no error or inequity in PERS's failure to notify Bingham that he had to request disability retirement benefits while employed). The district court was consequently bound by that conclusion. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (defining the law-of-the-case doctrine).

Thus, Bingham failed to demonstrate he was entitled to the extraordinary mandamus relief that he sought. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Israel Kunin, Settlement Judge
Kirk T. Kennedy
Attorney General/Carson City
Eighth District Court Clerk

---

respond or anticipatorily repudiate PERS's arguments showing that there was no conflict at all, which we can deem as a concession on the merits. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955).

[8]As far as the parties have raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.