

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JOSEPH GEIGER,
Appellant,
vs.
THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS,
Respondent.

No. 84212-COA

FILED

JUL 20 2022

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

ORDER OF AFFIRMANCE

Michael Joseph Geiger appeals from a district court order denying a petition for a writ of mandamus in an inmate litigation matter. First Judicial District Court, Carson City; James E. Wilson, Judge.

Geiger, an inmate, filed a petition for a writ of mandamus against respondent the State of Nevada Department of Corrections (NDOC) in connection with an economic impact payment (EIP) that he allegedly received from the United States Treasury based on legislation enacted by Congress during the Coronavirus pandemic. In particular, Geiger asserted that NDOC deposited the EIP in his inmate trust account and proceeded to deduct a substantial portion to satisfy certain of his debts and obligations, which he argued was a violation of NRS 21.105(1)(n)¹ (providing that, when a writ of execution or garnishment is levied on the personal bank account of

¹Geiger's petition specifically cited to NRS 21.150(1)(n); however, that statute does not have a subsection (1)(n). During the litigation that followed, NDOC observed that it appeared that Geiger actually intended to cite to NRS 21.105(1)(n), and the parties' subsequent arguments were framed in terms of that statute. As a result, we construe Geiger's petition to assert a violation of NRS 21.105(1)(n).

a judgment debtor, up to \$2,000 in the account is not subject to execution and must remain available to the debtor if, within the preceding 45 days, an electronic deposit was made into the account that is reasonably identifiable as exempt from execution, including deposits of federal benefits by the United States Department of the Treasury).

During the proceedings that followed, Geiger attached a document styled as an amended petition for a writ of mandamus to one of his filings, although he did not separately file it. In that document, Geiger reiterated his allegations concerning the EIP and deductions discussed above, presented similar allegations concerning a second EIP that he purportedly received and associated deductions made by NDOC, and asserted that the deductions violated both NRS 21.105(1)(n) as well as Senate Bill 22 (S.B. 22), which was passed by the Legislature and signed into law in 2021. 2021 Nev. Stat., ch. 319, at 1893-1903 (effective July 1, 2021). As relevant here, that bill amended NRS 209.247, which authorizes the Director of NDOC to take certain deductions from an inmate's account based on a deposit into the account from a source other than wages, by limiting the permissible amount of the combined deductions to 25 percent of the deposit. *Id.* § 1.9, at 1897-99.

NDOC responded to Geiger's purported amended petition, construing it as presenting claims for violation of the Fourth and Eighth Amendments to the United States Constitution and arguing that it should be denied because Geiger had a plain, speedy, and adequate legal remedy in the ordinary course of law in that he could assert such claims in a civil action. In the alternative, NDOC asserted that NRS 21.105(1)(n) did not apply because the deductions from Geiger's inmate account were not made by way of a writ of execution or garnishment, that S.B. 22 was inapplicable

because it became effective after the subject deductions were made and did not apply retroactively, and that his petition should therefore be denied because he did not establish a clear legal right to relief. The district court agreed on each point and denied Geiger's request for extraordinary writ relief. This appeal followed.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of mandamus will not issue when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). Nor will a writ of mandamus issue unless the petitioner establishes a clear legal right to the relief sought. *State ex rel. Conklin v. Buckingham*, 58 Nev. 450, 453, 83 P.2d 462, 463 (1938). We generally review a district court's grant or denial of writ relief for an abuse of discretion. *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006).

On appeal, Geiger initially disputes the district court's determination that he had a plain, speedy, and adequate legal remedy in the ordinary course of law by asserting that he did not seek writ relief based on any constitutional violations, but instead, sought to compel NDOC's compliance with NRS 21.105(1)(n) and S.B. 22. However, regardless of whether Geiger's allegations are construed to assert a constitutional violation, as NDOC and the district court did here, or as seeking declaratory or mandatory injunctive relief to rectify a violation of NRS 21.105(1)(n) and S.B. 22, *see* NRS 30.030 (authorizing district courts "to declare rights, status

and other legal relations whether or not further relief is or could be claimed”); *see also City of Reno v. Matley*, 79 Nev. 49, 60-61, 378 P.2d 256, 262 (1963) (rejecting an argument that an injunction was improper due to its mandatory features, observing that “it is settled beyond question that equity has jurisdiction in a proper case to compel affirmative performance of an act as well as to restrain it,” and that the court’s power in this respect includes “compelling the undoing of acts that ha[ve] been illegally done” (internal quotation marks omitted)), these are all claims that Geiger could have presented in the context of an ordinary civil action. Consequently, we agree with the district court’s conclusion that Geiger had a plain, speedy, and adequate remedy in the ordinary course of the law that precluded extraordinary writ relief. *See* NRS 34.170; *D.R. Horton*, 123 Nev. at 474, 168 P.3d at 736.

Moreover, we also agree that Geiger failed to establish a clear legal right to relief insofar as he relied on NDOC’s alleged violation of NRS 21.105(1)(n) and S.B. 22. *See State ex rel. Conklin*, 58 Nev. at 453, 83 P.2d at 463. In particular, while Geiger attempts to show that NRS 21.105(1)(n) was triggered in this case by analogizing the deduction of funds from his inmate trust account under NRS 209.247 to the levy of a writ of execution or garnishment on a judgment debtor’s personal bank account in a financial institution, his argument is unpersuasive. Indeed, regardless of any similarities between these actions, NRS 209.247 specifically authorized NDOC to deduct funds from an inmate trust account based on deposits into the account “from any source other than the offender’s wages,” which is what NDOC did here. And while the Legislature has empowered NDOC to reduce or eliminate the deductions set forth in NRS 209.247 as needed “to comply with a restriction imposed by federal law on deductions from wages

of an offender or from the account of an offender,” see NRS 209.2475(3), it has not seen fit to do so with respect to any of the exemptions from execution or garnishment set forth in NRS Chapter 21, even though it is certainly aware of that statutory scheme. See *City of Sparks v. Reno Newspapers, Inc.*, 133 Nev. 398, 402, 399 P.3d 352, 356 (2017) (explaining that Nevada’s appellate courts presume that, when the Legislature enacts a statute, it is aware of any related statutes). Thus, NRS 21.105(1)(n) is simply inapplicable under the circumstances presented here.

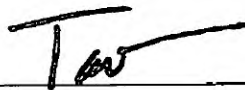
As to S.B. 22, insofar as Geiger contends that S.B. 22 applied retroactively to limit the deductions that NDOC could make from his inmate trust account based on the subject EIP deposits, which were made prior to S.B. 22’s effective date, his argument is once again unavailing. Nevada’s appellate courts presume that substantive changes to statutes apply prospectively absent a clear legislative expression to the contrary. See *Sandpointe Apartments, LLC v. Eighth Judicial Dist. Court*, 129 Nev. 813, 820, 313 P.3d 849, 853 (2013) (explaining the same). And here, the Legislature simply stated in S.B. 22 that it would become effective on July 1, 2021, without including any indication that the statute was intended to apply retroactively. See *id.* at 827, 313 P.3d at 858 (approvingly citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 257 (1994), for the proposition that “[a] statement that a statute will become effective on a certain date does not even arguably suggest that it has any application to conduct that occurred at an earlier date”). Consequently, S.B. 22 did not apply to limit

the deductions that NDOC could make from Geiger's inmate trust account based on the subject EIP deposits under NRS 209.247.²

Given the foregoing, we conclude that the district court did not abuse its discretion by denying Geiger's petition for a writ of mandamus. *See Kay*, 122 Nev. at 1105, 146 P.3d at 805. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²We recognize that Geiger also contends that NDOC treated S.B. 22 retroactively based on a memorandum that it circulated to inmates in which it stated that it reversed certain deductions from inmate trust accounts that were made prior to S.B. 22 as a result of that bill's changes to Nevada law. However, to the extent that Geiger's position is that NDOC violated or inconsistently applied an internal policy concerning S.B. 22, he faces the same problem that we initially addressed in this order, which is that he could have made such a claim in the context of an ordinary civil lawsuit, meaning that he had a plain, speedy, and adequate remedy that precluded writ relief. *See NRS 34.170; D.R. Horton*, 123 Nev. at 474, 168 P.3d at 736.

³Insofar as Geiger raises arguments that are not specifically addressed in this order, we have considered them and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

cc: Hon. James E. Wilson, District Judge
Michael Joseph Geiger
Attorney General/Carson City
Carson City Clerk