

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON SMITH,
Appellant,

vs.

NEVADA DEPARTMENT OF PRISONS,
LOVELOCK CORRECTIONAL
CENTER, CRAIG FARWELL, WARDEN;
AND STEPHEN P. CLARK,
CORRECTIONS OFFICER,
Respondents.

No. 39269

FILED

APR 26 2002

JANETTE M. BLUM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' motion to dismiss under NRCP 12(b)(5).¹

In reviewing an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.² In addition, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true.³

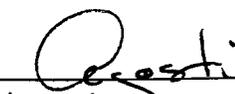
¹We deny appellant's April 19, 2002 request for a continuance in order to file an appellate brief. Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him.

²Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985); NRCP 12(b)(5).

³Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

Having reviewed the record in this matter, we conclude that the district court properly dismissed the complaint.³ We therefore, ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General/Carson City
Ron Smith
Pershing County Clerk

³See 5A Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 1357, at 299-301 (2d ed. 1990) (suggesting that an untimely motion to dismiss under F.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted may be construed as a timely motion for judgment on the pleadings); NRS 41.0322(1) (stating that a prisoner must exhaust administrative remedies before filing any action against the department or any of its agents to recover damages for personal injuries arising out of a tort); NRS 209.243(1) (providing that a prisoner may file an administrative claim with the department to recover compensation for personal injuries arising out of a tort alleged to have occurred during his incarceration as a result of an act of a department agent or employee).