

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANDY,  
Appellant,

vs.

BRIDLEPATH HOMEOWNERS  
ASSOCIATION, INC.; RICKYE  
EDDINGTON; EDDINGTON AND  
ASSOCIATES, INC.; CHRISTOPHER  
STAPLETON; TERESA M. KENYON;  
CHRISTOPHER STAPLETON AND  
TERESA M. KENYON D/B/A  
EDDINGTON AND ASSOCIATES, INC.;  
GAYLE A. KERN, LTD.; AND GAYLE A.  
KERN, ESQ.,  
Respondents.

No. 48943

**FILED**

JUN 13 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a final judgment in a tort action. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant's amended complaint consisted of seven causes of action arising out of her dealings with the respondents in relation to the home she owned that was part of the Bridlepath Home Owners Association. Three claims were brought under the Americans with Disabilities Act (ADA), one claim for retaliation was brought under the Fair Housing Act (FHA), and appellant asserted one negligence claim, and one breach of contract claim.

Early in the case, the district court dismissed the three ADA causes of action and the FHA retaliation claim. The ADA claims were dismissed because the district court found that the act did not apply to respondents because they were not a public entity nor did they provide

public accommodations. In addition, the district court found that the claims were barred by the statute of limitation. The retaliation claim under the FHA was likewise dismissed based on the statute of limitation. The district court also denied appellant's request for appointment of counsel. Finally, the district court granted summary judgment as to the negligence and breach of contract claims and denied appellant leave to file a second amended complaint. Appellant challenges all of these rulings in this appeal.

We first review the district court's dismissal of appellant's ADA claims and her FHA retaliation claim. We review an order granting a motion to dismiss rigorously; dismissal of a complaint is only proper "if it appears beyond a doubt that [appellant] could prove no set of facts, which, if true, would entitle [appellant] to relief."<sup>1</sup> We conclude that dismissal of these causes of action was proper because there were no set of facts which could entitle appellant to relief.

The district court properly found that the ADA only applies to public entities or those providing public accommodations,<sup>2</sup> and that respondents do not fall within this category. Therefore, dismissal of appellant's ADA claims was proper.

The district court also properly dismissed appellant's FHA retaliation claim for untimeliness. The FHA requires that claims under

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<sup>1</sup>Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. \_\_\_, \_\_\_, 181 P.3d 670, 672 (2008).

<sup>2</sup>42 U.S.C. §§ 12132, 12182.

the Act be brought within two years.<sup>3</sup> While the statute provides for tolling of the limitation period if the party files an administrative complaint with the Housing and Urban Development (HUD) Agency, this tolling only applies when the complaint brought in district court is the same as that brought before the administrative agency.<sup>4</sup> Appellant's filing with HUD did not involve any allegation of retaliation, nor did she amend her HUD filing to state such an allegation or file a second complaint with HUD based on retaliation. Additionally, her district court complaint did not assert any of the claims under the FHA that she raised in her HUD filing. Therefore, her administrative filing with HUD did not toll the time for bringing her retaliation claim and, as a result, her FHA claim was untimely and properly dismissed by the district court.

Appellant's two remaining claims, negligence and breach of contract, were resolved on summary judgment. Summary judgment is appropriate when "no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."<sup>5</sup> An order granting summary judgment is reviewed de novo.<sup>6</sup>

The district court found that appellant's negligence claim was barred by the two-year statute of limitations.<sup>7</sup> As appellant sold her home

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<sup>3</sup>42 U.S.C. § 3613(a)(1)(A).

<sup>4</sup>42 U.S.C. § 3613(a)(1)(B).

<sup>5</sup>Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

<sup>6</sup>Id. at 729, 121 P.3d at 1029.

<sup>7</sup>See NRS 11.190(4)(e).

in August 2003 and did not set forth any wrongful actions that occurred after this time or that she was unable to discover prior to this time, the time for bringing her negligence claim expired, at the latest, in August 2005. Because appellant did not file her complaint until September 6, 2005, her negligence claim was time-barred and the district court properly granted summary judgment on this claim.

The district court granted summary judgment on appellant's breach of contract claim based on a finding that appellant had not met her burden of showing any damages that were proximately caused by the alleged breach of contract. In order to avoid summary judgment a party must "set forth specific facts demonstrating the existence of a genuine issue for trial . . . ."<sup>8</sup> Appellant failed to set forth what duty under the contract respondents breached or any damages that could be considered related to or caused by the alleged breach of contract. As a result, there were no genuine issues for trial and summary judgment was proper.<sup>9</sup>

Appellant also challenges the denial of her requests for appointment of counsel under the ADA or the FHA. The decision regarding appointment of counsel under either of these Acts is left to the

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<sup>8</sup>Wood, 121 Nev. at 732, 121 P.3d at 1031.

<sup>9</sup>See Clark Cty. Sch. Dist. v. Richardson Constr., 123 Nev. \_\_, \_\_, 168 P.3d 87, 96 (2007) (stating that "causation is an essential element of a claim for breach of contract" and "[i]f the damage of which the promisee complains would not have been avoided by the promisor's not breaking his promise, the breach cannot give rise to damages.") (quotations omitted).

discretion of the district court.<sup>10</sup> A consideration of whether the claims raised in a lawsuit are meritorious is an important factor in determining whether a party is entitled to appointment of counsel.<sup>11</sup> With regard to appellant's state law claims, there is no right to appointment of counsel in civil cases not involving incarceration for contempt.<sup>12</sup> Based on our conclusion that the district court properly dismissed four of appellant's claims and properly granted summary judgment on the other two claims, we conclude that the district court did not abuse its discretion in denying appellant's requests for appointment of counsel.

Finally, appellant challenges the denial of her request to file a second amended complaint. We review the denial of a request to amend a complaint for an abuse of discretion.<sup>13</sup> We conclude that the district court did not abuse its discretion in finding that a second amended complaint would be futile because appellant failed to set forth any allegations that would allow her to avoid the dismissal and summary judgment of her original claims or to assert a new claim that would not trigger the same outcome.

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<sup>10</sup>42 U.S.C. §3613(b); 42 U.S.C. §12133; see also Castner v. Colorado Springs Cablevision, 979 F.2d 1417, 1420-21 (10th Cir. 1992); Zhu v. Countrywide Realty Co., 148 F. Supp. 2d 1154, 1157 (D. Kan. 2001).

<sup>11</sup>See Castner, 979 F.2d at 1420; Ivey v. Board of Regents of University of Alaska, 673 F.2d 266, 269 (9th Cir. 1982); Zhu, 148 F. Supp. 2d at 1157.

<sup>12</sup>Rodriguez v. Dist. Ct., 120 Nev. 798, 102 P.3d 41 (2004).

<sup>13</sup>Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993).

Based on the above conclusions,<sup>14</sup> we

ORDER the judgment of the district court AFFIRMED.<sup>15</sup>

Maupin, J.

Maupin

Cherry, J.

Cherry

Saitta, J.

Saitta

cc: Hon. Steven P. Elliott, District Judge  
Jandy  
Georgeson Angaran, Chtd.  
Lemons Grundy & Eisenberg  
Washoe District Court Clerk

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<sup>14</sup>Having considered the remaining arguments raised by appellant, we conclude that they lack merit.

<sup>15</sup>Appellant filed a reply and supplement to her reply to respondents' opposition to her motion for an extension of time to respond to our April 22, 2008 order. As our May 19, 2008, order resolved this motion, the reply and supplement are moot and we do not address them further.