IN THE SUPREME COURT OF THE STATE OF NEVADA

THERESSA "ZISSA" JANETTA RAMANI, AN INDIVIDUAL,
Appellant,
vs.
CHABAD OF SOUTHERN NEVADA, INC., A NEVADA NONPROFIT CORPORATION; YEHOSHUA HARLIG A/K/A SHEA HARLIG, AN INDIVIDUAL; CHABAD OF SUMMERLIN, INC., A NEVADA NONPROFIT CORPORATION; AND YISROEL SCHANOWITZ, AN INDIVIDUAL,
Respondents.

No. 49341

FILED

JUL 29 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment, certified as final under NRCP 54(b), in a tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

This court reviews a district court's summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Having considered the parties' briefs, oral argument, and the appellate record under this standard, we conclude that the district court did not err in granting respondents' summary judgment motion.[1] Id. On

[1]To the extent that appellant seeks to challenge any attorney fees or costs award, or an attorney's lien, this court lacks jurisdiction to consider these issues. See NRAP 4(a)(1) (providing that a notice of appeal must be filed within 30 days from when written notice of the challenged order's

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appeal, appellant raises a number of issues that, while we have considered and weighed them all in reaching our decision, we comment here on only two issues.

First, concerning appellant's principal argument that the synagogue respondents should be held vicariously liable for defendant Segelstein's improper conduct against appellant, we conclude that, as a matter of law, under the circumstances of this case, respondents cannot be held liable for Segelstein's intentional conduct, as it was outside the scope of Segelstein's duties. See Wood, 121 Nev. at 737, 740-41, 121 P.3d at 1035, 1037 (providing that an employer is generally not liable for an employee's intentional conduct, which is not reasonably foreseeable and was not committed in the course and scope of the employment). Although we recognize that there is a question of fact regarding whether Segelstein is in fact a synagogue employee or a volunteer, as he was alleged to be a cantor, that question of fact does not affect the legal bar to appellant's claim—that the individual's improper conduct occurred outside the scope of his employment or volunteer duties that he may owe to the synagogue respondents. See NRS 41.480 (providing that a nonprofit corporation may be liable for the injuries or damages caused by the negligent act of an agent, employee, or servant); NRS 41.485(2) (recognizing that a

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entry is served); NRAP 26(c) (adding 3 days to the 30-day filing requirement if service is by mail); Rust v. Clark Cty. School District, 103 Nev. 686, 688-89, 747 P.2d 1380, 1382 (1987) (noting that a district court's oral ruling is ineffective for any purpose, and thus, cannot be challenged on appeal).

charitable organization may be liable for the services performed by a volunteer on its behalf); Scottsdale Jaycees v. Superior Court of Maricopa Co., 499 P.2d 185, 188-89 (Ariz. 1972) (providing that a nonprofit, charitable organization may be liable for its unpaid volunteer's negligent actions when the volunteer's tortious conduct occurs within the course and scope of his or her duties). Because Segelstein's improper conduct was outside the scope of his employment or volunteer duties, the synagogue respondents cannot be held vicariously liable for his intentional conduct; thus, summary judgment on this issue was proper.

Second, with regard to appellant's intentional infliction of emotional distress claim against respondent Yehoshua Harlig, summary judgment was properly granted because appellant's opposition to the summary judgment motion failed to support that claim, effectively conceding it. See Schuck v. Signature Flight Support, 126 Nev. ___, ___, 245 P.3d 542, 545 (2010) (stating that to overcome a summary judgment motion the opposing party must not wait until the appeal to identify the relevant issues of fact and supporting evidence that might defeat the motion). A properly pleaded intentional infliction of emotional distress claim requires a plaintiff to specifically allege that the defendant intended to harm the plaintiff and that the plaintiff actually suffered emotional distress due to the defendant's conduct. See Jordan v. State, Dep't of Motor Vehicles, 121 Nev. 44, 75-76, 110 P.3d 30, 52 (2005) abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

Here, appellant accused Harlig of salacious misconduct directed towards her in an affidavit she attached to her opposition to Harlig's motion for leave to file a counterclaim, which she then

retendered in unsigned form in a supplemental opposition to the summary judgment motion. However, for the sake of argument even assuming this submission was properly before the court, she failed to tie it to her intentional infliction of emotional distress claim and her complaints did not tie it to that claim either. The conduct appellant alleges in her affidavit occurred before she filed her complaint. Respondents' summary judgment motion properly addressed plaintiff's claims as alleged in her complaint.

Even if appellant's affidavit factually supported such a claim against Harlig, appellant cannot obtain a de facto amendment of her complaint by presenting new arguments through an affidavit in support of her opposition to a motion for leave to file a counterclaim or in an opposition to summary judgment. See Grayson v. O'Neill, 308 F.3d 808, 817 (7th Cir. 2002) ("a plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment." (quotations omitted)). Appellant's complaint failed to assert with specific intent that Harlig's alleged actions were committed to cause her severe and extreme emotional distress and that she suffered any emotional distress as a result of the alleged conduct. Schuck, 126 Nev. at ___, 245 P.3d at 544-45 (recognizing that general arguments, without more, are not enough to preclude summary judgment); Wood, 121 Nev. at 731, 121 P.3d at 1031. Thus, because appellant's intentional infliction of emotional distress claim was deficient, summary judgment on this claim was properly granted.

As we find no error in the district court's grant of summary judgment, we

ORDER the judgment of the district court AFFIRMED.

Douglas, C.J.

Cherry, J.

Saitta, J.

Gibbons, J.

Pickering, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Timothy C. Williams, District Judge
Ara H. Shirinian, Settlement Judge
Duane Morris, LLP/Truckee CA
Lionel Sawyer & Collins/Las Vegas
Solomon Dwiggins & Freer
Dennett Winspear, LLP
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Eighth District Court Clerk