

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY LAHREN AND RICHARD SCHWEICKERT,
Appellants,

vs.

NEVADA SYSTEM OF HIGHER EDUCATION, A
POLITICAL SUBDIVISION OF THE STATE OF
NEVADA; ROBERT KARLIN, AN INDIVIDUAL;
PATRICIA CASHMAN, AN INDIVIDUAL; JOHN
LILLEY, AN INDIVIDUAL; JOHN FREDERICK,
AN INDIVIDUAL; CAROL ORT, AN INDIVIDUAL;
JAMES TARANIK, AN INDIVIDUAL; JANE
LONG, AN INDIVIDUAL; JANET VREELAND,
AN INDIVIDUAL; AND ROBERT WATTERS, AN
INDIVIDUAL,
Respondents.

No. 49846

FILED

SEP 18 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is an appeal from a district court order granting a motion for judgment on the pleadings in a tort action. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

This case involves 17 different causes of action that arise out of an employment relationship and an Equal Employment Opportunity Commission settlement agreement between appellants and respondents. Respondents filed a motion for judgment on the pleadings, which the district court granted. Because documents outside the pleadings were attached and considered by the district court, we review the district court's order under a summary judgment standard.¹ Summary judgment

¹NRCP 12(c).

is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.² Once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid summary judgment.³ We review an order granting summary judgment de novo.⁴

With regard to the defamation claims (the fifth, eighth, and fourteenth claims in appellants' amended complaint), the district court ruled that the claims were barred by the statute of limitations and that appellants did not meet the necessary requirements for defamation. Appellants argue that the defamation claims are not barred by statute of limitations because they did not discover some of the defamatory statements until November 2004, and thus they timely filed their claims in October 2005, before the two-year limitation period expired.⁵ Respondents contend that the discovery rule does not apply to defamation claims, and therefore, because the alleged defamation occurred no later than 2002, the claims are barred.

²Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³Id. at 731, 121 P.3d at 1030-31; NRC 56(e).

⁴Wood, 121 Nev. at 729, 121 P.3d at 1029.

⁵NRS 11.190(4)(c).

While there is a two-year statute of limitation on defamation claims,⁶ a cause of action does not arise until the party discovers it.⁷ As a result, there remains a question of fact in this case regarding when the various alleged defamatory statements were discovered. In particular, respondents did not provide anything to refute appellants' assertions that at least some of the defamatory statements were not discovered until the later date. Additionally, the district court erred in determining that the elements for defamation were not met, as respondents also did not provide any evidence in opposition to appellants' allegations of defamation. Therefore, questions of fact remain and summary judgment was improper at this stage of the proceedings. Accordingly, we reverse the portion of the district court's summary judgment for appellants' fifth, eighth, and fourteenth claims, as they all allege defamation.

In addition, we reverse the portion of the district court's summary judgment on the first claim for breach of the EEOC agreement, which the district court dismissed on res judicata grounds, based on a prior federal court action. But breach of the settlement agreement was not addressed in the federal court action because that action was dismissed for lack of jurisdiction. Also, this claim relates to the defamation claims, and it therefore remains potentially viable. Consequently, it is not barred by res judicata.⁸

⁶NRS 11.190(4)(c).

⁷Petersen v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990).

⁸See Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 837-38, 963 P.2d 465, 475 (1998) (requiring a "valid and final judgment" for claim preclusion); see also Moore's Federal Practice 3d, §131.30(3)(a) (noting
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As to the remaining causes of action, we conclude, after reviewing the briefs and appendices, that appellants' arguments lack merit and that judgment in favor of respondents was properly granted. We therefore affirm the district court's judgment on all remaining causes of action.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹⁰

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

... continued

that a dismissal based on lack of jurisdiction is not a "final judgment" with preclusive effect); Restatement (Second) of Judgments, § 19 cmt. a, § 20 (1982) (same).

⁹The district court held that the retaliation claim, asserting that Robert Karlin had "blackballed" appellants based on information he gave in a phone call for an employment reference check, was precluded by the federal district court's ruling. This is incorrect. But while this issue was not resolved in the prior federal court action, the claim is barred by the statute of limitations. Therefore, the district court's judgment is properly affirmed, although on different grounds. See Hannam v. Brown, 114 Nev. 350, 357, 956 P.2d 794, 799 (1998) (stating that we will affirm the district court "[i]f it reached the correct result, albeit for different reasons") (quoting Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987)).

¹⁰Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

cc: Hon. Robert H. Perry, District Judge
Cathy Valenta Weise, Settlement Judge
Jeffrey A. Dickerson
Frank H. Roberts
Washoe District Court Clerk