

IN THE SUPREME COURT OF THE STATE OF NEVADA

KURT WILLIAM ENSLEY,
Appellant,
vs.
LASALLE BANK, NA,
Respondent.

No. 50213

FILED

AUG 13 2008

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order (1) granting summary judgment, (2) expunging a notice of lis pendens, and (3) expunging a fugitive document recorded in a real property action. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant Kurt William Ensley filed a proper person action to quiet title and for damages and injunctive relief, ostensibly to prevent respondent from foreclosing on his home. He also recorded a notice of lis pendens with the Clark County Recorder. Without filing an answer, respondent LaSalle Bank, NA, filed a motion to dismiss for failure to state a claim or for summary judgment and to expunge the notice of lis pendens and a quitclaim deed recorded by Ensley.

After a hearing, the district court granted summary judgment in favor of LaSalle and expunged the notice of lis pendens and quitclaim deed. Ensley appeals the summary judgment.¹

¹As Ensley did not challenge the expungement of his quitclaim deed before the district court or on appeal, we will not consider this issue.

In determining whether a claim has been sufficiently stated to survive an NRCP 12(b)(5) motion to dismiss, all inferences must be construed in favor of the non-moving party and all factual allegations in the complaint must be accepted as true.² A party's complaint may be "dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief."³ If matters outside the pleadings are presented to and not excluded by the court, then the motion is treated as one for summary judgment.⁴

Here, it was unnecessary for the district court to consider matters outside the complaint in deciding the motion to dismiss under NRCP 12(b)(5). Ensley's complaint and the exhibits attached thereto implicitly recognized the existence of a mortgage loan secured by Ensley's residence, acknowledged that foreclosure proceedings on the loan had commenced, and did not allege that the loan had been fully paid. His complaint and exhibits further show that he knew that the loan had been assigned to LaSalle. If, as he alleged, foreclosure had not yet been completed at the time the complaint was filed, he would not have had clear title to his property as it still would have been encumbered by the mortgage loan. Ensley's remaining arguments are inapposite to his quiet

²Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, ___, 181 P.3d 670, 672 (2008).

³Id.

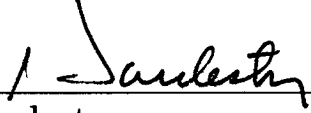
⁴NRCP 12(b).

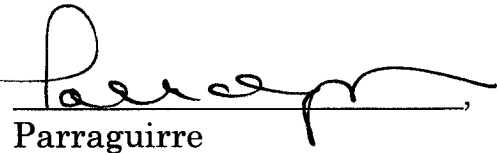
title action, lack any legal basis, and do not warrant this court's consideration.⁵

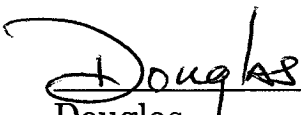
Additionally, Ensley's complaint did not allege any extreme or outrageous conduct arising out of LaSalle's foreclosure attempts, as required to support his claim of intentional infliction of emotional distress.⁶ Finally, Ensley's claim for injunctive relief was properly denied, as he had not alleged sufficient facts to show any likelihood of success on the merits.

Consequently, the district court did not err in dismissing Ensley's action.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁵See Browning v. State, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004) (recognizing that a "claim warrants no consideration" when appellant fails to provide this court with "any cogent argument, legal analysis, or supporting factual allegations").

⁶Kahn v. Morse & Mowbray, 121 Nev. 464, 117 P.3d 227 (2005) (requiring a claim for intentional infliction of emotional distress to allege facts showing extreme or outrageous conduct).

⁷See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (stating that a district court order will be affirmed if "it reached the correct result, albeit for different reasons").

cc: Hon. Sally L. Loehrer, District Judge
Kurt William Ensley
Cooper Castle Law Firm
Eighth District Court Clerk