

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHERYL FEALY,  
Appellant,  
vs.  
MANDALAY CORP.; AND MGM  
GRAND RESORTS, LLC,  
Respondents.

No. 50427

**FILED**

MAR 10 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 granting summary judgment in a torts matter. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Below, appellant Cheryl Fealy sued her employers, respondents Mandalay Corp. and MGM Grand Resorts, LLC, alleging that they improperly required her to sign a W-4 form and unlawfully withheld federal income taxes from her paychecks, even though she was not a "taxpayer" subject to federal income tax laws. Fealy also asserted that respondents, through these actions, intentionally inflicted emotional distress upon her.

Fealy later moved for summary judgment, arguing that respondents were prohibited from withholding her wages for income tax purposes under NRS 608.110, which provides that an employer may withhold portions of wages as authorized by the employee, because she had not authorized them to do so. Respondents opposed Fealy's motion and countermoved for summary judgment, asserting that, under federal law, they were immune from suit and that, in any case, they were required to collect the tax, as evidenced by a letter from the IRS directing them to withhold certain amounts from Fealy's paychecks for income tax purposes. Although Fealy filed an opposition, the district court granted respondents'

countermotion for summary judgment, concluding that respondents were immune from suit and that Fealy had failed to demonstrate that respondents' actions constituted extreme and outrageous conduct so as to entitle her to damages for emotional distress. The court also found that Fealy's claims were frivolous and awarded respondents attorney fees. Fealy has appealed.

In her civil proper person appeal statement, Fealy argues that no law requires her to pay federal income taxes or to submit to the withholding of her pay for such purposes, since she is not a "taxpayer" as defined under federal law. She also asserts that she did not voluntarily sign any W-4 form, and that forcing her to do so would interfere with her constitutional rights to property and liberty. Fealy requests that the district court's order be reversed and that respondents be ordered to return the amounts already withheld from her paychecks and to "cease and desist" their income tax withholding activities.

We review district court orders granting summary judgment de novo.<sup>1</sup> Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in a light most favorable to Fealy, demonstrate that no genuine issue of material fact remained in dispute and that respondents were entitled to judgment as a matter of law.<sup>2</sup>

As the district court correctly ruled, federal law requires employers to withhold amounts from employees' pay for federal income tax

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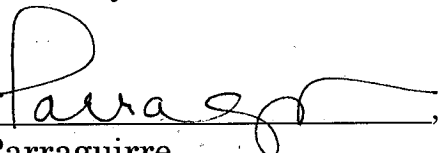
<sup>1</sup>See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

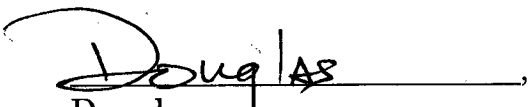
<sup>2</sup>Id.

purposes and prohibits employees from suing their employers for doing so.<sup>3</sup> Accordingly, as Fealy improperly sued her employers for withholding wages for federal income tax purposes, no genuine issue of material fact remained disputed with respect to Fealy's claims and respondents were entitled to judgment as a matter of law. Therefore, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>3</sup>26 U.S.C. §§ 3403 and 7421 (2000); 26 C.F.R. § 31.3402(f)(2)-1(g)(2)(iii)-(v) (2007); see Bright v. Bechtel Petroleum, Inc., 780 F.2d 766 (9th Cir. 1986); Pesci v. I.R.S., 67 F. Supp. 2d 1189 (D. Nev. 1999); see also NRS 608.120(2)(b) (noting that an employer may withhold wages if directed to do so by a federal agency with authority to issue such directives); Rivera v. Baker West, Inc., 430 F.3d 1253, 1260 (9th Cir. 2005) (noting that people who challenge income tax withholding are not without recourse, even though they cannot sue their employer, because they can seek a refund from the I.R.S.).

<sup>4</sup>Although, in her civil appeal statement, Fealy has not explicitly challenged the district court's order with respect to her claim for intentional infliction of emotional distress and the award of attorney fees, we note that the district court's decision as to these two matters was proper. See Miller v. Jones, 114 Nev. 1291, 1299-1300, 970 P.2d 571, 577 (1998) (noting the elements of a claim for intentional infliction of emotional distress); NRS 18.010(2)(b); Bergmann v. Boyce, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (explaining that whether to award attorney's fees is within the district court's sound discretion).

cc: Hon. Elissa F. Cadish, District Judge  
Cheryl Fealy  
Fisher & Phillips LLP  
Eighth District Court Clerk