

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL TODD BREWER,
Appellant,
vs.
MICHELLE JEAN ZUCCO,
Respondent.

No. 51121

FILED

DEC 03 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 dismissing appellant's complaint in a family law matter. Second Judicial District Court, Family Court Division, Washoe County; Frances Doherty, Judge.

In August 2007, appellant filed a complaint in the district court against respondent, his ex-wife, asserting claims for breach of contract and intentional infliction of emotional distress. In his complaint, appellant alleged that he and respondent had agreed, as set forth in the parties' 1992 marital settlement and incorporated into the divorce decree, that he would have visitation rights with the parties' minor child. Nonetheless, according to appellant's complaint, despite his efforts for over 12 years, he was unable to have a relationship with the parties' child because respondent would not permit him to contact the child.¹ As damages, appellant requested \$200,000 for his breach of contract claim,

¹Appellant is a Nevada Department of Corrections' inmate, and his complaint alleged that respondent did not allow him to have telephonic or written contact with the child.

\$200,000 for his emotional distress claim, and “such punitive damages as a Jury may find appropriate,” along with interest accruing from January 1992 and costs.

Respondent filed a motion to dismiss the complaint, arguing that appellant had failed to state a claim upon which relief could be granted and that the complaint was filed for the purpose of harassing respondent. Appellant opposed the motion, and respondent filed a reply. The district court then entered an order transferring the matter to the family court, based on its finding that appellant’s complaint implicated NRS Chapter 125C and the family court’s original, exclusive jurisdiction over proceedings brought pursuant to that chapter.

After the family court accepted the reassignment, it entered an order granting respondent’s motion to dismiss. The family court found that, although it generally may grant make-up visitation when a complainant demonstrates that he has been wrongfully deprived of visitation with the minor child, in this case, appellant was seeking monetary damages, which the district court was not authorized to award. Regardless, the court noted, appellant waited over 15 years to file a complaint, and the child had since turned 18 years old.

Appellant filed a motion to alter or amend the dismissal order under NRCP 59(a), arguing that his complaint was a civil action, not a family law matter, as evidenced by the fact that he was seeking monetary damages. According to appellant, his action should not have been transferred or dismissed without giving him the opportunity to correct any pleading errors. Respondent opposed the motion. The district court

denied appellant's motion, finding that it was untimely filed more than ten days after notice of entry of the challenged order was served,² and regardless, since appellant's claims arose from an alleged breach of the marital settlement agreement, the matter properly was transferred to the family court.³

This court's review of the order dismissing appellant's complaint is rigorous,⁴ as this court, in determining de novo whether appellant set forth allegations sufficient to state a claim for relief,⁵ accepts all factual allegations in his complaint as true and construes all inferences in his favor.⁶ Accordingly, appellant's complaint was properly dismissed only if his allegations would not entitle him to any relief.⁷

In this case, appellant sought monetary damages in excess of \$400,000, based on allegations that respondent breached the marital settlement agreement, as incorporated into the parties' divorce decree. Under NRS 3.223(1)(a), the family court has original, exclusive

²See WDCR 12(8).

³See NRS 3.223 (outlining matters over which the family court has jurisdiction).

⁴Vacation Village v. Hitachi America, 110 Nev. 481, 874 P.2d 744 (1994).


⁵Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

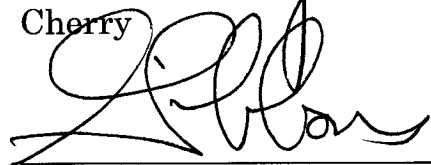
⁶See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).


⁷Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, 181 P.3d 670 (2008).

jurisdiction over divorce and post-divorce proceedings.⁸ As the family court pointed out in its order dismissing appellant's complaint, if a parent has been deprived of visitation with the child, the appropriate remedy under NRS 125C.020 is additional visitation time, which must be sought within one year after being wrongfully deprived of visitation. Instead of seeking an appropriate, timely remedy under NRS 125C.020, appellant waited 15 years and then filed a complaint for monetary damages. Appellant, in his pleadings, referenced no authority that would allow money damages when there is noncompliance with a visitation directive. Accordingly, because we conclude that appellant's complaint stated no allegations upon which the requested relief could be granted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

⁸See NRS Chapters 125, and 125C (governing dissolution of marriage and custody and visitation, proceedings over which the family court has jurisdiction).

cc: Hon. Frances Doherty, District Judge, Family Court Division
Randall Todd Brewer
Kenneth J. McKenna
Washoe District Court Clerk