

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 52203

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. First Judicial District Court, Carson City; William A. Maddox, Judge.

In August 2007, appellant filed a complaint in the Second Judicial District Court, seeking monetary damages from respondent, his ex-wife, based on 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. 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. Appellant then appealed from that order.¹

¹See Brewer v. Zucco, Docket No. 51121 (certified copy of Notice of Appeal, February 22, 2008).

After appellant's notice of appeal was filed, appellant filed a complaint in the First Judicial District Court in March 2008, again seeking monetary damages from respondent, based on the same breach of contract and emotional distress allegations set forth in his August 2007 complaint filed in the Second Judicial District Court. Respondent filed a motion to dismiss the March 2008 complaint, arguing that appellant had failed to state a claim upon which relief could be granted by seeking monetary damages for a breach of the divorce decree, which became final in January 1992. Respondent also argued that the judgment rendered in the Second Judicial District Court was conclusive and final, thus precluding appellant from filing a second complaint based on the same claims. Appellant opposed the motion, and respondent replied. The district court granted the motion, based on its review and consideration of the pleadings. This appeal followed.

This court's review of the order dismissing appellant's complaint is rigorous.² Under that standard, appellant's complaint was properly dismissed only if his allegations would not entitle him to any relief.³

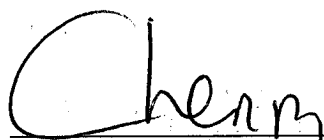
As the Second Judicial District Court pointed out in its order dismissing appellant's first complaint, if a parent has been deprived of visitation with the child, the appropriate remedy under NRS 125C.020 is additional visitation time, which must be sought within one year after

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

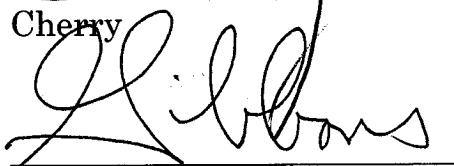
³Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002), overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. ___, ___, 191 P.3d 670, 672 (2008).

being wrongfully deprived of visitation. Instead, here, appellant waited 15 years and then filed a complaint seeking monetary damages. Below, appellant referenced no authority that would allow for an award of money damages when there was past noncompliance with a visitation directive, and we have located none. Accordingly, dismissal for failure to state a claim was appropriate, and we

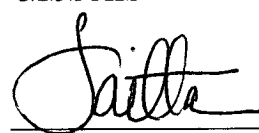
ORDER the judgment of the district court AFFIRMED.⁴

 _____, J.

Cherry

 _____, J.

Gibbons

 _____, J.

Saitta

cc: Hon. William A. Maddox, District Judge
Randall Todd Brewer
Kenneth J. McKenna
Carson City Clerk

⁴As we have since affirmed the district court's dismissal order as to appellant's first complaint, see Brewer v. Zucco, Docket No. 51121 (Order of Affirmance, December 3, 2008), res judicata principles serve as an additional basis for affirming the district court's dismissal order as to appellant's second complaint. See Five Star Capital Corp. v. Ruby, 124 Nev. ___, 194 P.3d 709, 713 (2008) (explaining that claim preclusion applies to bar a subsequent action when (1) the parties are the same, (2) the final judgment in the first action is valid, and (3) the subsequent action is based on the same claims that were brought in the first action).