IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRI PATRAW, Appellant, vs. CARY GROTH, AN INDIVIDUAL; NEVADA SYSTEM OF HIGHER EDUCATION, A STATE ENTITY; AND MILTON GLICK, AN INDIVIDUAL, Respondents.	No. 53918
TERRI PATRAW, Appellant, vs. CARY GROTH, AN INDIVIDUAL; NEVADA SYSTEM OF HIGHER EDUCATION, A STATE ENTITY; AND MILTON GLICK, AN INDIVIDUAL, Respondents.	No. 54573

FILED
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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court amended order granting summary judgment in an employment action and a post-judgment order awarding attorney fees and costs. Second Judicial District Court, Washoe County; Patrick Flanagan and Brent Adams, Judges.

Appellant Terri Patraw coached the women's soccer team at the University of Nevada, Reno (UNR) from 2004 until her termination in 2007. Respondent UNR Athletic Director Cary Groth hired Patraw in 2004 as an at-will employee. Patraw's team excelled and Groth consistently reappointed her each year. However, off the field, Patraw was involved in conflicts with other coaches that included both professional and personal matters.

Between 2006 and 2007, Patraw reported NCAA violations and made other complaints regarding her treatment and her team's

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treatment within the athletic department. During this time, Patraw repeatedly communicated that she was resigning or would resign if things did not change. Groth reappointed Patraw in June 2007, but Patraw unequivocally resigned in August 2007 after Patraw and Groth engaged in a multiyear contract discussion. Patraw timely rescinded her resignation three days later; however at this point, Groth decided to terminate Patraw.

Patraw received a letter that gave her 60 days' notice of termination and informed her that she was immediately being placed on paid annual leave. Groth later stated that Patraw was terminated because Patraw failed to follow directives, Groth came to lack confidence in Patraw as a head coach, and Patraw routinely made threats when she did not get her way. Specifically, Groth stated that Patraw threatened to resign when she did not get the salary she wanted, and threatened that it would cost UNR millions of dollars if UNR did not resolve the inequities that existed in access to athletic facilities between female and male student athletes.

In November 2007, Patraw initiated an action against Groth and respondent Nevada System of Higher Education (NSHE). The complaint, as amended, included 14 claims for relief.

In December 2007, Patraw purportedly assaulted Annette Marjanovic, Patraw's interim replacement. Based on this incident, respondent, and then-UNR President, Milton D. Glick, sent Patraw a letter in which he "withdr[ew] consent for [Patraw] to be on campus, which include[d] all University-sponsored events whether or not they are on the main campus." President Glick also stated that he took the "action to protect life, limb, and property and to ensure the maintenance of order."

In April 2008, Patraw initiated a second, post-termination lawsuit to enjoin NSHE from hiring a new soccer coach and to challenge president Glick's decision to ban her from UNR. In this complaint, Patraw made five claims against president Glick, Groth, then UNR Assistant Athletic Director Cindy Fox, and NSHE.

The district court then consolidated the two cases. The respondents (collectively NSHE) moved for summary judgment against Patraw on all of her claims. Following the summary judgment motion, Patraw filed an emergency motion for sanctions against NSHE for committing fraud upon the district court by illegally obtaining personnel documents from Arizona State University (ASU).

The district court entered summary judgment against Patraw denied Patraw's motion for sanctions on May 5, 2009. On May 18, 2009, the district court filed an amended order in response to a motion by Patraw that sought to clarify whether the summary judgment applied to all of Patraw's claims. The district court concluded that Patraw's termination was proximately caused by Patraw's behavior during contract negotiations, her frequent threats of resignation dating back to July 2006, and her personnel problems with the university. Prior to District Court Judge Patrick Flanagan entering this amended order, Patraw filed a motion to vacate the summary judgment order against her, to vacate the order for sanctions based on the ASU documents, to disqualify Judge Flanagan, and to reassign her case to another judge. On May 21, 2009, after the district court's amended order was filed, Patraw filed a second motion for recusal which set forth that Towbin Dodge, LLC v. District Court, 121 Nev. 251, 112 P.3d 1063 (2005), permitted her untimely

challenge under NRS 1.235 and that it required the motion to be referred to another judge.

Judge Flanagan requested a reassignment later that day for the limited purpose of considering Patraw's motion for recusal, but declined to strike his May 18 amended order or May 19 order that denied Patraw's motion to shorten time. On reassignment to hear the motion to disqualify, District Court Judge Brent Adams denied Patraw's motion.

Subsequently, NSHE moved for attorney fees and costs. The district court awarded attorney fees and costs of $111,336 to NSHE after determining that Patraw did not accept NSHE's offer of judgment.

Patraw argues on appeal that the district court: (1) abused its discretion by failing to disqualify Judge Flanagan, (2) erred in granting summary judgment against Patraw, and (3) abused its discretion by awarding attorney fees and costs to NSHE. We disagree.[1] Because the

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[1]Patraw also argues that the district court erred by granting untimely summary judgment motions. When a party fails to obey a scheduling or pretrial order, a judge may impose sanctions or issue any other order as appropriate. NRCP 16(f). However, the imposition of sanctions is within the power of a district court and is not reversed "absent a showing of abuse of discretion." See Young v. Johnny Ribeiro Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Patraw's argument lacks merit because it misstates the filing date of NSHE's summary judgment motions and otherwise fails to demonstrate an abuse of discretion on the part of the district court.

Patraw further argues that the district court erred in denying Patraw's motion for sanctions based on fraudulent conduct. We decline to address that argument because Patraw fails to demonstrate fraud by clear and convincing evidence or otherwise demonstrate that the district court abused its discretion by refusing to grant Patraw's request for sanctions. See NC-DSH, Inc. v. Garner, 125 Nev. ___, ___, 218 P.3d 853, 860-61

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parties are familiar with the facts and procedural history in this case, we do not recount them further except as is necessary for our disposition.

The district court did not abuse its discretion by refusing to disqualify Judge Flanagan

Patraw argues that the district court abused its discretion by failing to disqualify Judge Flanagan.[2] We disagree.

A judge is presumed to be unbiased, and a judge's decision regarding recusal is given substantial weight and is not overturned absent a clear abuse of discretion. Rivero v. Rivero, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009). Under NRS 1.230(3), "[a] judge . . . may disqualify himself or herself [for] . . . actual or implied bias." NRS 1.235(1)[3] provides that a party seeking such disqualification "for actual or implied bias or

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. . . continued

(2009) (stating that "[a] party seeking to vacate a final judgment based on fraud upon the court bears a heavy burden" of establishing that fraud by clear and convincing evidence, and that even if such burden were met, the motion "is addressed to the sound discretion of the trial court" (internal quotation marks omitted)).

[2]We decline Patraw's request to take judicial notice of District Court Judge Adams' June 22, 2010, order of voluntary recusal and Flanagan's August 26, 2010, recusal from her administrative case. Patraw does not demonstrate a valid reason as to why this court should take judicial notice of the recusal orders of Flanagan and Adams in her separate administrative litigation. See Mack v. Estate of Mack, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (holding that this court will generally not take judicial notice of records in other matters).

[3]NRS 1.235(1) was amended on March 30, 2011. The amendment is technical and does not impact our analysis. 2011 Nev. Stat., ch. 9, § 1 at 10.

prejudice must file an affidavit specifying the facts upon which the disqualification is sought," and "a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay." Unless the case has not been assigned or is reassigned, "the affidavit must be filed: (a) [n]ot less than 20 days before the date set for trial or hearing of the case; or (b) [n]ot less than 3 days before the date set for the hearing of any pretrial matter." NRS 1.235(1)(a)-(b). Additionally, "an affidavit is untimely if the challenged judge has already ruled on disputed issues." Towbin, 121 Nev. at 256, 112 P.3d at 1067.

Nevada caselaw recognizes a second remedy for situations where judicial disqualification grounds are not discovered or could not reasonably have been discovered until after the passage of NRS 1.235(1)'s deadlines. Towbin, 121 Nev. at 256, 112 P.3d at 1067. "[I]f new grounds for a judge's disqualification are discovered after the time limits in NRS 1.235(1) have passed, then a party may file a motion to disqualify based on [Nevada Code of Judicial Conduct Canon 2] as soon as possible after becoming aware of the new information."[4] Towbin, 121 Nev. at 260, 112 P.3d at 1069. Such a "motion must set forth facts and reasons sufficient to cause a reasonable person to question the judge's impartiality, and the challenged judge may contradict the motion's allegations." Id. Such motion must be referred to another judge. Id.

[4]The NCJC addressed in Towbin, Canon 3, is now contained in NCJC 2.11 and is effective as of January 19, 2010. See Towbin, 121 Nev. at 257-58, 112 P.3d at 1067-68; In the Matter of the Amendment of the Nevada Code of Judicial Conduct, ADKT 427 (Order, December 17, 2009).

Patraw argues that Judge Flanagan violated NRS 1.235. However, Patraw's affidavit and motions were untimely under NRS 1.235. The trial in Patraw's case was scheduled for May 11, 2009, the parties appeared for arguments on February 18, 2009, and the district court first entered summary judgment on May 5, 2009. Patraw filed her first motion for disqualification on May 18, 2009. The district court entered an amended summary judgment order the same day. Patraw did not file her second motion for disqualification until May 21, 2009. See Towbin, 121 Nev. at 256, 112 P.3d at 1067.

Patraw contends that she was not obligated to move for disqualification because Judge Flanagan was obligated to disqualify himself for having personal knowledge of facts that were in dispute due to his defense of a UNR faculty member in previous litigation. Because Judge Flanagan did not seek a waiver for his involvement in the previous litigation, Patraw asserts that he had no jurisdiction to sit in judgment as of April 28, 2009, when that representation was at issue. Finally, Patraw, relying on Turner v. State, 114 Nev. 682, 962 P.2d 1223 (1998), asserts that automatic reversal is required because Judge Flanagan was required to recuse himself.

Patraw's motion, however, was insufficient to state a legally cognizable ground of bias because judges need not disqualify themselves merely because they know one of the parties. See Jacobson v. Manfredi, 100 Nev. 226, 230-31, 679 P.2d 251, 254 (1984)). With the exception of the anonymous blog, all of Patraw's purported facts of alleged bias were known or reasonably should have been known to Patraw prior to summary judgment. See Towbin, 121 Nev. at 256, 112 P.3d at 1067. Even if Patraw's purported grounds for disqualification were not reasonably

discovered before the passage of the NRS 1.235 deadlines, Patraw has not set forth facts sufficient to cause a reasonable person to question Judge Flanagan's impartiality. See id. at 260, 112 P.3d at 1069. Specifically, Patraw fails to demonstrate bias or prejudice on the part of Judge Flanagan, or his personal knowledge of disputed facts in her case based upon his previous representation of a UNR faculty member in a separate lawsuit. See NCJC 2.11(A)(1).

Finally, Patraw fails to show that Judge Flanagan was required to recuse himself or that there was any other error that would mandate reversal. Cf. Turner, 114 Nev. at 686, 962 P.2d at 1225 (concluding "that recusal is mandatory in cases where the district court judge, prior to taking the bench, acted as an attorney in the case"). We conclude that that there is no clear abuse of discretion either in Judge Flanagan's decision not to recuse himself or in Judge Adams' decision not to disqualify Judge Flanagan. See Rivero, 125 Nev. at 439, 216 P.3d at 233 (2009).

The district court properly granted summary judgment against Patraw on the claims in her first complaint

Patraw argues that the district court improperly granted summary judgment against her on the claims that she alleged in her first complaint. We disagree.

Standard of review

A district court's grant of summary judgment is reviewed de novo, and deference is not given to the district court's findings. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. The party

opposing a motion for summary judgment must set forth specific facts demonstrating the existence of a genuine factual issue. Id. at 731, 121 P.3d at 1030-31. If a nonmoving party bears the burden of persuasion at trial, then the party moving for summary judgment is able to satisfy its burden by submitting evidence to negate an element of the nonmoving party's claim or pointing to an absence of evidence to support that claim, in which the nonmoving party must "introduce specific facts that show a genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).

Title IX claim

"Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action." Jackson v. Birmingham Bd. of Ed., 544 U.S. 167, 173 (2005). A plaintiff alleging retaliation must establish a prima facie case by demonstrating that (1) he or she engaged in protected activity, (2) he or she suffered an adverse employment action, and (3) there was a causal link between the protected activity and the employment decision. Stegall v. Citadel Broadcasting Co., 350 F.3d 1061, 1065-66 (9th Cir. 2003). If the prima facie case is met, then the burden shifts to the defendant "to articulate a legitimate, non-discriminatory reason for the adverse employment action." Id. at 1066 (quoting Manatt v. Bank of Am., N.A., 339 F.3d 792, 800 (9th Cir. 2003)) (internal quotation mark omitted). If the defendant provides a legitimate, non-discriminatory reason, then the burden shifts back to the plaintiff to show that the reason was merely a pretext for the discriminatory motive. Id.

A plaintiff can prove retaliation based on complaints of gender discrimination through direct or circumstantial evidence. Id. If direct

evidence is offered, then "a triable issue as to the actual motivation of the employer is created even if the evidence is not substantial." Id. (quoting Godwin v. Hunt Wesson, Inc., 150 F.3d 1217, 1221 (9th Cir. 1998)) (internal quotation mark omitted). However, if only circumstantial evidence of motivation is presented, a plaintiff must set forth "'specific' and 'substantial' evidence of pretext to survive summary judgment." Id. (quoting Godwin, 150 F.3d at 1222). Ultimately, the plaintiff may establish a violation by a preponderance of evidence. Id. at 1068.

While Patraw argues that NSHE admitted retaliation in termination or pay, Patraw does not identify anywhere in the record where NSHE made such an admission. Thus, Patraw fails to establish retaliation by direct evidence. Patraw's citation to the record is inaccurate and misleading. For instance, Patraw omits from quotations the reasons why she was terminated. She omits the fact that the district court considered Patraw's evidence that discussion of a potential pay raise and a multi-year contract occurred after Patraw made her Title IX complaints.

We conclude that summary judgment was appropriate because Patraw did not refute the reasons stated for her termination, NSHE offered Patraw's off-the-field conduct as a non-discriminatory basis for Patraw's termination, and Patraw has not shown that her firing was mere pretext for a discriminatory motivation. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981) (articulating how a plaintiff can prove discrimination directly or indirectly when the burden of persuasion is on the plaintiff).

Title VII Equal Protection claim

A Title VII plaintiff alleging discriminatory treatment must prove, by a preponderance of evidence, (1) that he or she was subject to intentional discrimination and (2) that a non-nondiscriminatory basis

proffered by the employer was not the true reason for the employment decision, in which the plaintiff "may succeed . . . either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Burdine, 450 U.S. at 252-53, 256.

The district court determined that sufficient evidence existed to terminate Patraw based on Patraw's failure to follow directives, UNR's lack of trust and confidence in her, Patraw's numerous threats to resign, Patraw's performance evaluations, and the Taylor conflict. Patraw does not address or refute the district court's conclusions but merely asserts that she proffered substantial statistical evidence of disparate treatment. Patraw's citations to the record, however, rely on her own motions, unsubstantiated declarations and correspondence, irrelevant pages of deposition transcripts, and other unsupportive documents. Patraw does not produce any specific, substantial evidence of pretext, and therefore the district court's determination was proper. See Steckl v. Motorola, Inc., 703 F.2d 392, 393 (9th Cir. 1983).

We conclude that Patraw fails to demonstrate a genuine issue of material fact regarding pretext or discriminatory animus. Summary judgment was appropriate because NSHE offered Patraw's off-the-field conduct as a non-discriminatory basis for Patraw's termination, and Patraw fails to demonstrate that gender discrimination motivated NSHE or that NSHE's reasoning is without merit.

First Amendment retaliation claim

A First Amendment retaliation claim involves an ordered five-step factual and legal inquiry:

> (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a

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> private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009).

Patraw offered no evidence to support her allegation regarding a violation of her right to petition and associate, and her attempt to show additional sexual harassment reporting is not supported by her citation to the record. Patraw simply fails to show that protected speech was a substantial and motivating factor in her termination, or that she even engaged in protected speech regarding sexual harassment.

Further, Patraw's reporting of alleged NCAA and Title IX violations was made in her official capacity rather than as a private citizen. Patraw signed a position description questionnaire that listed compliance with NCAA rules and regulations as a major responsibility of her job, and Patraw signed an NCAA certificate of compliance which stated that the signee certifies that he or she will report "any knowledge of violations of NCAA legislation involving [the signee's] institution."

We conclude that Patraw's reporting about Coach Fox's comment did not rise to the level of a public concern, that Patraw's reporting of NCAA and Title IX violations was part of her job duties and not protected speech, and that she has failed to raise a genuine issue of material fact that would preclude summary judgment on this claim.

Defamation and stigma-plus defamation

"Defamation is a publication of a false statement of fact." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). An opinion cannot be defamatory because "there is no such thing as a false idea." Id. (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974)) (internal quotation mark omitted). If a plaintiff is defamed and the damage to that person's reputation caused the denial of a federally protected right or the damage was inflicted in connection with a federally protected right, that person is entitled to damages under a "stigma-plus" defamation theory. Cooper v. Dupnick, 924 F.2d 1520, 1532 (9th Cir. 1991).

Patraw argues that the district court erroneously found that Groth's statements to the athletic department were true and that all of the alleged statements were not defamatory. Patraw asserts that Groth's statements were actionable as "mixed type" statements of opinion and fact because they implied the existence of information which would tend to lower Patraw's reputation. Specifically, Patraw cites to Groth stating that Patraw's departure was due to "philosophical differences," and that "[t]hings came up that [Groth] couldn't talk about." Groth also told Patraw's former co-workers that "[Patraw] is not their friend and will take them down too."

Patraw, however, cannot succeed on a "mixed-type" theory because it requires an "inference that the source has based the opinion on underlying, undisclosed defamatory facts." Lubin v. Kunin, 117 Nev. 107, 113, 17 P.3d 422, 426 (2001) (quoting Nevada Ind. Broadcasting Corp. v. Allen, 99 Nev. 404, 411, 664 P.2d 337, 342 (1983)) (internal quotation mark omitted). Unlike the statements in Lubin, Groth's statements are not "susceptible of two different interpretations, one of which is capable of

defamatory construction." Id. at 112, 17 P.3d at 426. There are no underlying implications that Patraw committed some egregious act, and the statements are either true or opinions. See id. at 112-13, 17 P.3d at 426. We conclude that Patraw failed to create a genuine issue of material fact as to the existence of a false published statement by UNR, and thus, both her defamation and stigma-plus claims fail as a matter of law.

Breach of contract claim

Unambiguous contractual construction is a question of law. Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (noting that contracts lacking ambiguity or factual complexities are suitable for determination by summary judgment). Any employee in Nevada is presumed to be at-will, but "[a]n employee may rebut this presumption by proving by a preponderance of the evidence that there was an express or implied contract of employment that provided for termination only for cause." Southwest Gas v. Vargas, 111 Nev. 1064, 1071, 901 P.2d 693, 697 (1995).

The addendum to Patraw's employment contract stated that Patraw could "be terminated at any time for any reason upon 60 days' written notice of termination" by UNR. The August termination letter gave her 60 days' notice of termination with employment ending in October and immediately placed her on paid annual leave, which the contract permitted UNR to do. Patraw's salary agreement letter stated that all terms and conditions of her employment remained in effect and that a salary change was not a change in terms that required signing a new contract. The contract negotiations did not change the terms of this contract and NSHE has already demonstrated the absence of any retaliatory motive for its decision to terminate Patraw.

Because Patraw's contract addendum expressly provided for termination for any cause upon 60 days' notice and Patraw has not created a genuine issue of material fact regarding retaliatory motive, we conclude that Patraw was not improperly terminated under her contract after she was given 60 days' notice and placed on paid leave.[5]

Equal Pay claim

The Equal Protection Act "prohibits discrimination in wages 'between employees on the basis of sex . . . for equal work, on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.'" Stanley v. University of Southern California, 13 F.3d 1313, 1321 (9th Cir. 1994) (quoting 29 U.S.C. § 206(d)(1) (1988)). However, each job requirement "must be substantially equal to state a claim." Id. Employers "may consider the marketplace value of the skills of a particular individual

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[5]Patraw also argues that because the district court's disposal of her breach of contract claims and covenant of good faith and fair dealing claim were intertwined, her breach of covenant of good faith and fair dealing claim must be reinstated along with the erroneously dismissed breach of contract claims. UNR provided Patraw with 60 days' notice of her termination as required under her contract and placed her on paid leave. Because Patraw has not created a genuine issue of material fact demonstrating that UNR acted in bad faith when terminating her employment, we conclude that the district court properly entered summary judgment against Patraw's related claim regarding the breach of covenant of good faith and fair dealing. See Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) (stating that "[w]hen one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, damages may be awarded against the party who does not act in good faith").

when determining his or her salary," and "[u]nequal wages that reflect market conditions of supply and demand are not prohibited." Id. at 1322.

The district court concluded that UNR demonstrated significant differences in the responsibilities and obligations among its head coaches. Patraw's citation to pay differences between women's soccer and men's baseball coaches was of limited assistance because Patraw failed to produce evidence that the pay was different for substantially equal jobs. For an Equal Protection Act analysis, the jobs with disparate pay must be "substantially equal."

We conclude that the district court properly granted summary judgment on Patraw's Equal Pay claim because Patraw fails to demonstrate that UNR's coaching positions receive disparate salaries despite those coaches performing substantially equal jobs.[6]

The district court properly granted summary judgment against Patraw on the claims in her second complaint

Patraw argues that the district court erred in granting summary judgment on the claims in her second complaint. We disagree.

First Amendment

To assert a First Amendment retaliation claim, a public employee must demonstrate that he or she "engaged in constitutionally protected speech" and that the employer "took adverse employment action against the employee," in which the "employee's speech was a substantial or motivating factor in the adverse action." Posey v. Lake Pend Oreille School Dist. No. 84, 546 F.3d 1121, 1126 (9th Cir. 2008) (quoting Freitag v.

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[6]We have considered the other claims raised by Patraw in her first complaint. We conclude they lack merit.

Ayers, 468 F.3d 528, 543 (9th Cir. 2006)) (internal quotation marks omitted).

The district court concluded that Patraw "offered no admissible evidence to support a finding that there is a causal connection between her alleged protected activities and the campus ban," and that "[t]he undisputed facts reflect[ed] Ms. Patraw was banned from campus as a result of" Patraw's incident with Marjanovic at the UNR basketball game on December 12, 2007. We conclude that Patraw waived her arguments regarding the ban being unconstitutionally broad and a prior restraint on speech because she failed to raise these issues in district court. See Delgado v. American Family Ins. Group, 125 Nev. 564, 571, 217 P.3d 563, 567 (2009) (stating that issues raised for the first time on appeal are waived). With regard to causation, Patraw also fails to present any evidence that would create a genuine issue of material fact regarding her speech being a substantial and motivating factor in president Glick issuing his ban after the Marjanovic incident. We therefore conclude that granting summary judgment as to Patraw's First Amendment claim against president Glick was proper.

Defamation

Patraw's defamation claim stated (1) "Glick made false and defamatory statements of or concerning [Patraw] with respect to his banning her from campus and from other functions, implying that she was a danger to others"; (2) "[s]uch is defamation per se"; and (3) "Glick acted with actual malice." The district court concluded that President Glick did not direct that the campus ban of Patraw be published in the media, sending the notice of the ban to Patraw was not a publication, and the statement in a local newspaper that Patraw's ban followed an incident on campus was not false and could not be attributed to president Glick.

Patraw does not argue in her opening brief that any alleged defamatory statements were false. Further, president Glick's letter to Patraw concerning the ban was not defamatory and a valid ban and cannot be the basis of a lawsuit. See Lovern v. Edwards, 190 F.3d 648, 655 (4th Cir. 1999). Because defamation is the publication of a false statement of fact, we conclude that president Glick's statements and letter to Patraw banning her from campus were not defamation and that summary judgment was proper.

42 U.S.C. § 1983 discrimination in pay, Equal Pay Act, and 42 U.S.C. § 2000e-3

Patraw argues that NSHE improperly incorporated its previous arguments for summary judgment on Patraw's first complaint into its arguments for summary judgment on Patraw's second complaint. Specifically, Patraw asserts that NSHE moved for summary judgment on the second complaint's 42 U.S.C. § 1983 discrimination in pay, Equal Pay Act, and 42 U.S.C. § 2000e-3 claims by simply referencing the same arguments it made in its summary judgment motion on Patraw's first complaint. However, Patraw contends that the claims in the second complaint are different from the claims in the first complaint because they relate to post-termination facts.

Patraw contends that the district court incorrectly analyzed the discrimination claims under McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) as Title VII claims and ignored Patraw's evidence. The district court found that Patraw had not established a prima facie case for disparate treatment as required under Title VII and that NSHE had produced substantial evidence demonstrating that Patraw's termination was for non-discriminatory reasons. Patraw also asserts NSHE misrepresents the evidence that she presented to support the 42 U.S.C. §

2000e-3 claim. Patraw argues that the evidence demonstrates that she complained to Groth of discriminatory salary practices, that Groth testified that Patraw's salary complaints were a basis for termination, and that Patraw's termination directly affects her salary. Finally, Patraw states it is undisputed that UNR hired a less qualified replacement at more pay than Patraw, which creates a genuine issue of material fact as to whether her complaints affected her salary and employment status.

Patraw does not cite to any authority with respect to these issues. Patraw also incorporated her arguments from the previous summary judgment opposition into her opposition to these claims, something that she argued NSHE had no grounds to do. Patraw does not explain how the district court erred under a Title VII analysis and provides no evidence that the district court made unfounded accusations against her. Finally, Patraw's discriminatory pay arguments have already been addressed and Patraw fails to distinguish or address the district court's reliance on Stanley v. University of Southern California, 13 F.3d 1313 (9th Cir. 1994).

Because Patraw fails to set forth any specific evidence as to discriminatory pay or otherwise attempt to explain how the district court erred in dismissing her 42 U.S.C. § 1983 discrimination in pay, Equal Pay Act, and 42 U.S.C. § 2000e-3 claims, we conclude that the district court did not err in granting summary judgment against Patraw on these claims.

The district court did not err in awarding attorney fees

Patraw argues that the district court erred in awarding NSHE attorney fees. We disagree.

The decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a manifest abuse of discretion. County of Clark v. Blanchard Constr. Co., 98

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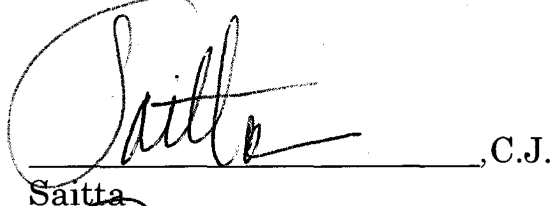
Nev. 488, 492, 653 P.2d 1217, 1220 (1982). A party who rejects an offer of judgment yet fails to obtain a more favorable judgment may be ordered to pay attorney fees. NRS 17.115(4)(d); NRCP 68(f)(2). An offeree may accept the offer within ten days, but such offer will lapse after that time. NRS 17.115(2)-(3); NRCP 68(e)-(f). The "offer of judgment pursuant to NRCP 68 and NRS 17.115 is irrevocable during the ten-day period." Nava, 118 Nev. at 398, 46 P.3d at 61. If the offer of judgment is not accepted within ten days after the date of service, then the offer shall be deemed rejected by the party to whom it was made. NRS 17.115(3); NRCP 68(e).

Patraw argues that the district court erred in awarding attorney fees because she was not afforded ten days to accept the offer, which was made on April 24, 2009, when the district court first entered summary judgment on May 5, 2009. Because the offer was only available for seven days, Patraw contends that she was not given her full ten days to consider the offer. Patraw points out that the offer was irrevocable during this ten day period. Patraw argues that there is no evidence that she rejected the offer and that her opposition to attorney fees states that she "certainly did not 'reject' the offer before [the May 5, 2009 order] because the offer remains open until it lapses."

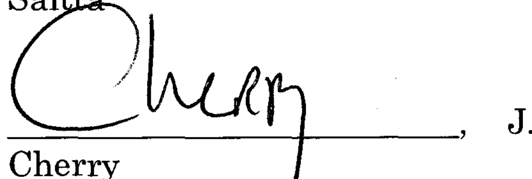
The district court determined that Patraw did not accept NSHE's April 24, 2009 offer of judgment and entered the amended summary judgment order on May 18, 2009. Although the district court did not address the effect of the initial May 5, 2009 summary judgment order, the district court concluded that Patraw rejected the offer by allowing the offer to lapse before it entered the amended summary judgment order.

Because Patraw's own motion against attorney fees contended that the offer was open until it lapsed, Nava v. Dist. Ct. unequivocally holds that an offer of judgment is irrevocable within ten days, and Patraw did not accept the offer, we hold that the district court did not abuse its discretion in determining that attorney fees were recoverable against Patraw for failing to accept the offer of judgment rendered by NSHE. 118 Nev. 396, 398, 46 P.3d 60, 61 (2002).[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, C.J.
Saitta



_______________, J.
Cherry

_______________, J.
Gibbons

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[7]Although appellant has not been granted leave to proceed in proper person, see NRAP 46(b), we have considered the proper person documents received and conclude that the relief requested is not warranted.

cc: Hon. Patrick Flanagan, District Judge
Hon. Brent Adams, District Judge
Robert L. Eisenberg, Settlement Judge
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Mary Dugan, General Counsel, University of Nevada, Reno
Washoe District Court Clerk