

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
SCOTT EDWARDS,
Respondent.

No. 56747

FILED

JUN 09 2011

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 for legal malpractice. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

This court reviews de novo an order granting an NRCP 12(b)(5) motion to dismiss, accepting all factual allegations in the complaint as true, and drawing all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). We have reviewed the record, appellant's civil proper person appeal statement, and respondent's response, and we conclude that dismissal was appropriate.

Appellant's complaint alleged causes of action for legal malpractice and "various torts" against respondent, who was appointed by the court to represent appellant for the purposes of appeals in several criminal cases. Court-appointed defense attorneys enjoy the same degree

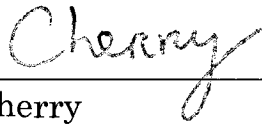
of immunity from malpractice actions as is extended to public defenders by NRS 41.032(2) and NRS 41.0307(4)(b), and “cannot be held liable for malpractice arising out of discretionary decisions made pursuant to their duties as court-appointed defense counsel.” Morgano v. Smith, 110 Nev. 1025, 1028, 879 P.2d 735, 736-37 (1994).


As to appellant’s “various torts” claims, appellant has not pleaded sufficient facts to demonstrate the necessary elements of a claim for relief as to his breach of confidentiality, defamation, intentional infliction of emotional distress, invasion of privacy, false light, and right of publicity causes of action. Western States Constr. v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (explaining that a complaint must at least “set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought”). Appellant lacks standing to bring his remaining two causes of action, for fraud and intentional misrepresentation by respondent to another client, as pleaded in the complaint.¹

¹To the extent that we affirm the dismissal of any of appellant’s claims on grounds different than the district court, we note that this court will affirm a district court decision if it reached the right result, albeit for a different reason. Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987). Additionally, we decline to address those arguments raised by appellant for the first time in his civil proper person appeal statement as it is well established that arguments raised for the first time on appeal need not be considered by this court. Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997).

Accordingly, we conclude that the district court did not err in dismissing the underlying action, and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Ferrill Joseph Volpicelli
Washoe County District Attorney/Civil Division
Washoe District Court Clerk

²On May 17, 2011, appellant submitted to this court a “Confession of Error,” arguing that respondent failed to file a response to appellant’s civil proper person appeal statement, as required by our January 18, 2011, order and asking this court to treat the failure as a confession of error. We direct the clerk of this court to file appellant’s request for confession of error, provisionally received on May 17, 2011. Because respondent timely filed and served his response on March 18, 2011, appellant’s request for a confession of error is denied. On May 31, 2011, appellant filed a motion asking that this court take judicial notice of respondent’s failure to serve appellant with his response to appellant’s motion for confession of error. Because respondent properly served his response on appellant, appellant’s motion to take judicial notice is denied.