

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,  
Appellant,  
vs.  
KELLY & SULLIVAN LAW OFFICE,  
LTD.; SEAN P. SULLIVAN; AND  
KEVIN M. KELLY,  
Respondents.

No. 58331

**FILED**

MAY 11 2012

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court orders granting motions to dismiss in a legal malpractice action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant argues that the district court erred in granting respondents' motion to dismiss his first amended complaint by treating his claim for fraudulent conduct as a claim for legal malpractice and dismissing the claim without leave to amend, and in dismissing his claim for obtaining money under false pretenses as a claim that does not exist as a civil cause of action. Appellant argues that the district court also erred by granting respondents' motion to dismiss his second amended complaint, dismissing both his breach of contract claim, which appellant did not seek or receive leave to add as an additional claim, and his amended claim for fraudulent conduct for failure to plead the claim with sufficient particularity.

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). Having reviewed the record and considered appellant's civil proper person appeal statement, we conclude that dismissal was appropriate.

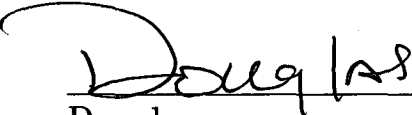
Appellant's first cause of action for fraudulent conduct in his first amended complaint fails to state with particularity any circumstances of alleged fraud by respondents. NRCP 9(b) (requiring the circumstances of alleged fraud to be stated with particularity). Accordingly, the district court did not err in dismissing this cause of action and allowing appellant leave to amend. Appellant's claims for obtaining money under false pretenses in the first amended complaint and fraudulent conduct in the second amended complaint also fail to particularly state any alleged fraudulent conduct by respondents and also fail to allege that respondents themselves obtained any money from appellant.<sup>1</sup> NRCP 9(b); NRS 205.380(1) (requiring that a person "knowingly and designedly" obtain money by false pretenses). The record further shows that the district court did not err in dismissing appellant's breach of contract claim in his second amended complaint, as the district court found that appellant did not previously allege breach of contract and he was not granted leave to amend his complaint to add a new cause of action. NRCP 15(a) (providing, in part, that "a party may amend the

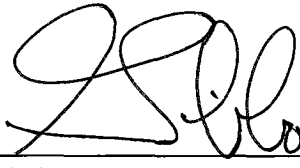
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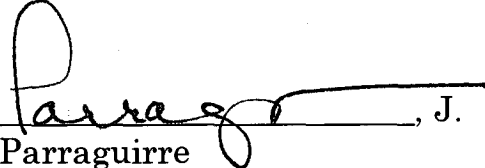
<sup>1</sup>We perceive no error in the district court's order treating appellant's fraudulent conduct claim as one for legal malpractice and holding that his claim for obtaining money under false pretenses did not exist as a civil cause of action.

party's pleading only by leave of court or by written consent of the adverse party"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Elissa F. Cadish, District Judge  
Robert Holmes, III  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk