IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR R. GARCIA,
Appellant,
vs.
NEVADA SYSTEM OF HIGHER EDUCATION, A STATE ENTITY; AND ADAM GARCIA, AN INDIVIDUAL,
Respondents.

No. 58500

FILED

MAR 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY K. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an employment matter and an order awarding attorney fees and costs. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Victor R. Garcia worked as a police officer for the University of Nevada Reno Police Department, an entity of respondent Nevada System of Higher Education. Appellant filed a complaint alleging that respondent Adam Garcia, the department chief, violated his First Amendment rights to participate in a "vote of no confidence" and "speak out" against the chief and that respondents were negligent in hiring and retaining the chief. Subsequently, appellant received a five-day suspension for remarks he made to a news reporter while on duty regarding the Department's patrol jurisdiction and the number of officers on duty, and to another officer about his displeasure with the Department's leadership. After an unsuccessful administrative proceeding regarding his suspension, appellant amended his complaint to include his speech to the reporter and fellow officer as protected speech. The district court granted summary judgment in favor of respondents, finding that appellant's speech to the reporter was made as a public

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employee and his speech to the other officer did not involve a matter of public concern, and therefore, neither speech was protected. The district court also concluded that there was no genuine issue of material fact as to the remaining alleged instances of protected speech, and that because respondents had not violated appellant's First Amendment rights, summary judgment was also appropriate on the negligence claims. The district court also granted respondents' motion for attorney fees and costs. This appeal from both district court orders followed.

Having considered the parties' arguments and the record, we conclude that the district court properly granted respondents summary judgment. *See* NRCP 56(c) (setting forth the summary judgment standard); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that this court reviews summary judgments de novo). "[T]he First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). The court must balance the employee's interest in commenting on matters of public concern and the state's interest in promoting the efficiency of the public services it provides. *See Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968). Although appellant's comments to the reporter about the Department's patrol areas and how many officers were on duty addressed matters of public concern, both appellant and respondents acknowledged that disclosing such information raises public safety concerns. Thus, we conclude that the state's interest in maintaining the Department's effectiveness in providing campus security outweighs appellant's interest in discussing these matters of public concern and that summary judgment

on this issue was proper.[1] *See Rankin v. McPherson*, 483 U.S. 378, 388 (1987) (explaining that avoiding interference with the effective functioning of a public entity can be a strong state interest).

As for appellant's conversation with a fellow officer regarding his displeasure with the chief, appellant admitted that he thought it was a personal conversation and his discourteous speech stemmed from the chief's alleged denial of a bereavement leave request. We conclude that appellant's speech was not a matter of public concern and was therefore not protected speech. *See Pool v. VanRheen*, 297 F.3d 899, 906 (9th Cir. 2002) (explaining that speech addressing individual personnel disputes and grievances is not of public concern).

With regard to the other alleged instances of protected speech, we conclude that the record lacked evidence to support them and summary judgment was properly granted. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (explaining that if the party opposing summary judgment will bear the burden of persuasion at trial, the moving party can show that summary judgment is proper by pointing out that there is an absence of evidence to support the nonmoving

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[1]Although the district court did not reach the question of the state's interests and instead concluded that appellant had spoken in his capacity as a public employee, not as a private citizen, we nevertheless conclude that summary judgment was properly granted on this issue. *See Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1130-31 (9th Cir. 2008) (noting that the adequacy of the state's justification for treating the plaintiff differently than the public should be addressed *before* considering whether the plaintiff spoke as a private citizen); *see also Sengel v. IGT*, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000) (explaining that this court will affirm a district court decision that reached the right result, but for the wrong reason).

party's case). In addition, because we have concluded that respondents did not violate appellant's First Amendment rights, and appellant has not set forth any other factual basis for his negligence claims, those claims necessarily fail. Therefore, we find no error in the district court's order granting respondents summary judgment.

Finally, appellant has not demonstrated that the district court abused its discretion in awarding attorney fees and costs to respondents based on a rejected offer of judgment. *See* NRCP 68; NRS 17.115(4); *RTTC Commc'ns, LLC v. Saratoga Flier, Inc.*, 121 Nev. 34, 40, 110 P.3d 24, 28 (2005) (setting forth the factors to consider in awarding attorney fees based on an offer of judgment and explaining that this court reviews the award for an abuse of discretion).

For the reasons discussed above, we affirm the district court's orders granting summary judgment and awarding attorney fees and costs.

It is so ORDERED.[2]

_______________, J.
Hardesty

_______________, J.
Douglas

_______________, J.
Cherry

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[2]To the extent that the parties' arguments have not been expressly addressed in this order, we conclude that those arguments lack merit.

cc: Hon. Janet J. Berry, District Judge
David Wasick, Settlement Judge
Jeffrey A Dickerson
Frank H. Roberts
University of Nevada, Reno, Office of General Counsel
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