

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN REUBER; AND KENNETH
KAYIAN,
Appellants,
vs.
RENO DODGE SALES, INC. D/B/A
RENO DODGE,
Respondents.

No. 61602

FILED

NOV 01 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing with prejudice all claims. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellants Alan Reuber and Kenneth Kayian are former at-will employees of respondent Reno Dodge.¹ Reuber and Kayian filed a complaint for tortious discharge after allegedly being terminated for reporting suspected illegal activities to Reno Dodge's owner, Don Weir.²

¹ As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

² Though Reuber and Kayian argue that theirs is not a case based on exposing an illegal activity, but rather refusing to participate in an illegal activity sanctioned by the employer, the record does not support their argument. Reuber and Kayian's claim for tortious discharge was narrowly focused on their terminations being in response to whistleblower activities. Further, both Reuber and Kayian testified that they believed they were terminated for reporting the alleged illegal activities to Weir, and at no point did either indicate that they may have been fired for refusing to engage in such activities.

The district court entered partial summary judgment on the tortious discharge claim, concluding that Reuber and Kayian were not protected under Nevada's whistleblower laws because they failed to report the suspected illegal activities to outside authorities.

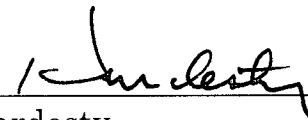
On appeal, Reuber and Kayian urge this court to overturn existing jurisprudence and adopt an approach that offers protection for both external and internal whistleblowers. We decline to do so.

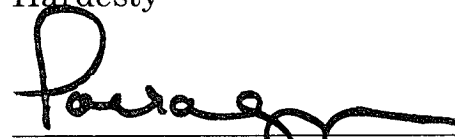
"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law." *Id.* (alterations in original) (quoting NRCPC 56(c)). In reviewing an order granting summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.*

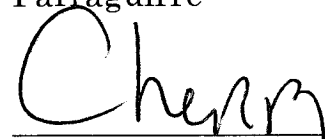
In Nevada, tortious discharge claims can arise when an employee is terminated for "whistleblowing;" that is, for reporting an employer's alleged illegal activity to the appropriate authorities. *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433-34 (1989). An employee's decision to expose illegal or unsafe practices should be encouraged to the extent he seeks to further the public good rather than private or proprietary interests. *Id.* However, where an employee only "report[s] the activity to his supervisor rather than the appropriate authorities," the employee is "merely acting in a private or proprietary manner" and is not eligible for whistleblower protections. *Id.*

Here, Reuber and Kayian's claims arose solely from their alleged whistleblower activities, and there is no evidence in the record to indicate that they engaged in any type of external reporting. While this court has recognized protections for whistleblowers, such protections are limited to an employee who reports activity to an agency outside the company, *Wiltsie*, 105 Nev. at 293, 774 P.2d at 433, and we are not compelled to extend the grounds for a whistleblowing claim beyond this limitation. See *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (“[U]nder the doctrine of *stare decisis*, [this court] will not overturn [precedent] absent compelling reasons for so doing. Mere disagreement does not suffice.”) (footnote omitted).³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

³ Reuber and Kayian argue that *Wiltsie* is inapplicable to them, as they were not simply reporting unlawful activity, but rather refusing to engage in unlawful activity at the behest of their employer. Instead, they ask this court to apply *Bigelow v. Bullard*, 111 Nev. 1178, 901 P.2d 630 (1995). However, as noted above, this argument is unpersuasive because there is no evidence in the record to support an inference that Reuber or Kayian were asked to engage in illegal activities or that they ever refused to do so.

cc: Hon. Brent T. Adams, District Judge
Lansford W. Levitt, Settlement Judge
Mark L. Mausert
The Zipin Law Firm, LLC
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Washoe District Court Clerk