

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ECHEVARRIA,  
Appellant,  
vs.  
ANGEL ECHEVARRIA,  
Respondent.

No. 66618

**FILED**

NOV 19 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a torts and contract action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Shortly after the death of their mother, Jean Echevarria, appellant Michael Echevarria filed a complaint against his sister, respondent Angel Echevarria, for claims relating to Angel's care for and influence over Jean. On Angel's motion, and over Michael's opposition, the district court dismissed the complaint for lack of standing and failure to state a claim on which relief could be granted. This appeal followed. At the direction of this court, respondent has filed a response to appellant's civil appeal statement.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Moreover, a decision to dismiss a complaint for failure to state a claim is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn

in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* at 228, 181 P.3d at 672. Nevertheless, a complaint must “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.” *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

#### *Undue influence*

In his first claim, Michael alleged that Angel unduly influenced Jean into relinquishing certain rights, including property interests, which divested Jean’s estate of certain assets and prevented Michael from recovering his full share of Jean’s property upon her death. The district court dismissed this claim on the ground that it had not been pleaded with specificity.

NRCP 9(b) requires “all averments of fraud or mistake” to be pleaded with particularity. And the Nevada Supreme Court has indicated that undue influence is “a species of fraud.” *See In re Estate of Peterson*, 77 Nev. 87, 111, 360 P.2d 259, 271 (1961) (quoting with approval a jury instruction given by the district court). In order to plead a fraud claim with particularity, a complaint must “include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981). On appeal, Michael asserts that the complaint was sufficient to raise the

claim of undue influence including menace, duress, and fraud.<sup>1</sup> Angel disagrees.

To establish a claim that a defendant unduly influenced a grantor of a trust, a plaintiff must show that the defendant used her influence to overcome the free agency of a grantor. See *In re Estate of Bethurem*, 129 Nev. \_\_\_, \_\_\_, 313 P.3d 237, 241 (2013). The Nevada Supreme Court has held that when a confidential relationship exists between a parent and child, and “a conveyance of property is made by the weaker to the dominant party, a presumption arises that the conveyance was obtained through the undue influence of the dominant party.” *Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993 (1966) (quoting *Walters v. Walters*, 188 P. 1105 (N.M. 1920)).

Here, taking Michael’s assertions in the complaint as true, the complaint states that Jean and Angel had a confidential relationship insofar as Angel was Jean’s guardian, Angel was the dominant party because Jean suffered from dementia, and Angel used her influence to divest Jean’s estate of certain assets. But Michael’s complaint does not include any specific allegations regarding the manner in which Angel allegedly influenced Jean. Nor does it contain any reference to the time or place of any such exercise of influence. And, as noted above, we must

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<sup>1</sup>While Michael asserts that the allegations in the complaint were sufficient, he does not dispute that an undue influence claim must be pleaded with particularity. Indeed, he specifically includes fraud as one of the conditions underlying his undue influence claim. As a result, the issue of whether the district court correctly required this claim to be pleaded with particularity is not before us on appeal. Thus, for the purpose of resolving this matter, we assume, without deciding, that undue influence claims must be pleaded with particularity.

assume for the purpose of this appeal that undue influence claims must be pleaded with particularity. Thus, we conclude the district court correctly dismissed this claim. *See Brown*, 97 Nev. at 583-84, 636 P.2d at 874.

*Breach of contract*

As to Michael's second claim, alleging breach of contract, the district court concluded that Michael had failed to allege the existence of a contract. In his appeal statement, Michael asserts that a contract existed through the trust created by Jean, which imposed certain duties on Angel. In her response, Angel contends that the trust was "not a contract to which Mr. Michael is a proper party, and no other valid contract existed based on the evidence before the court."

To state a claim for breach of contract, a plaintiff must allege that a contractual relationship existed between the plaintiff and the defendant and that the defendant materially breached a duty owed to the plaintiff under the contract. *See Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). In his complaint, Michael did not allege that a contract existed between himself and Angel. Moreover, while he asserts on appeal that a contract existed through the Jean R. Echevarria Trust,<sup>2</sup> he does not explain how the trust agreement created a contract between himself and Angel or how Angel breached any provision of the trust agreement creating a contractual duty to Michael. As Michael has not identified any contractual relationship between himself and Angel, we conclude that the district court properly dismissed this claim. *See id.*

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<sup>2</sup>Although Michael did not clearly make this assertion in his complaint, it appears from Angel's response that, at the hearing on the motion to dismiss, Michael contended that a contract existed through the trust and that the district court considered this argument.

*Constructive and actual fraud*

In his third claim, Michael alleged that Angel committed constructive and actual fraud. In particular, he asserted that Angel, who was in a confidential relationship with Jean, made fraudulent statements to Jean about her property, including that he stole and mismanaged property. Additionally, Angel purportedly made fraudulent statements to her attorney and advisors in order to get Jean to change documents regarding the disposition of her property. And Angel allegedly had documents drafted, some of which were misleading and confusing, that Jean would not have signed in the absence of duress, menace, or fraud.

As discussed above, “all averments of fraud or mistake” must be pleaded with particularity. NRCP 9(b). This requirement is satisfied by identifying “the time, the place, the identity of the parties involved, and the nature of the fraud or mistake.” *Brown*, 97 Nev. at 583-84, 636 P.2d at 874. As with the undue influence claim, Michael’s fraud claim made only general allegations that Angel made false statements, but he did not identify the time or place of these alleged statements. Further, while he identified Angel and Jean as being involved, he also asserted that Angel made false statements to other individuals, but did not specifically identify those individuals. Thus, Michael also failed to state the fraud and constructive fraud claim with particularity, and we therefore conclude that the complaint failed to state a claim on this basis.<sup>3</sup> *See id.*

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<sup>3</sup>Although the district court dismissed this claim for lack of standing, we do not reach that finding, as we conclude that the complaint did not state a fraud claim. *See Bongiovi v. Sullivan*, 122 Nev. 556, 575 n.44, 138 P.3d 433, 447 n.44 (2006) (explaining that a district court may be affirmed if it reached the right result, even if it did so for the wrong reason).

*Elder abuse and neglect*

Michael's fourth claim alleged that Angel was Jean's caretaker, but that she failed to provide Jean with a safe environment and that she neglected and exploited Jean. The district court dismissed this claim for lack of standing.

On appeal, Michael argues that the dismissal of this claim was improper because NRS 41.085 provides him standing as an heir. He further contends that NRS 41.1395 is ambiguous with regard to who can maintain an action on behalf of a vulnerable person, and he asks this court to determine the intent of that statute. Angel, on the other hand, contends that the dismissal was proper because only Jean or her estate would have standing to bring an elder abuse claim.

NRCP 17(a) provides that "[e]very action shall be prosecuted in the name of the real party in interest." Only "[a]n executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute" is permitted to bring a suit without joining the real party in interest. NRCP 17(a). NRS 41.1395(1) provides, as relevant here, that "if an older person or a vulnerable person . . . suffers a loss of money or property caused by exploitation, the person who caused the . . . loss is liable *to the older person or vulnerable person.*" (Emphasis added). Thus, under the plain language of NRS 41.1395(1), Michael would not be the real party in interest on this claim.

Nevertheless, if Michael is correct that NRS 41.085 authorizes him to proceed on Jean's behalf, he would be a "party authorized by statute" to bring the suit under NRCP 17(a). NRS 41.085(2) permits an heir to maintain a wrongful death action against a person who caused the

death of the decedent. But nothing in NRS 41.085 authorizes an heir to maintain an action for elder abuse or neglect on behalf of a decedent. Thus, as Michael is not the real party in interest under NRS 41.1395(1), and nothing in NRS 41.085 authorizes him to bring an action for elder abuse or neglect on Jean's behalf, we conclude that the district court properly dismissed this claim for lack of standing.

*Intentional misstatement of facts/abuse of process*<sup>4</sup>

In the fifth claim, Michael asserted that Angel intentionally misstated facts and abused the judicial process. In particular, he alleged that Angel knowingly caused Jean to pursue unwarranted litigation against him. The district court dismissed this claim, noting that Michael alleged that Jean, rather than Angel, actually filed the lawsuit against him, and thus, that he could not state a claim against Angel on this ground.

On appeal, Michael argues that Angel was Jean's fiduciary and pursued the action on Jean's behalf. Angel responds that Michael did not state facts on which this claim could be granted. Particularly, she notes that the lawsuit in question was brought by Jean, not by Angel.

To state a claim for abuse of process, a plaintiff must allege that the defendant had an ulterior motive other than resolving a legal dispute and that the defendant committed "a willful act in the use of the

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<sup>4</sup>Michael's complaint also referred to malicious prosecution, but "[a] malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879-80 (2002). As Michael has not alleged that a criminal action was brought against him, his claim of malicious prosecution necessarily fails.

legal process not proper in the regular conduct of the proceeding.” *Kovacs v. Acosta*, 106 Nev. 57, 59, 787 P.2d 368, 369 (1990). With regard to the required willful act, the Nevada Supreme Court has held that the filing of a complaint does not satisfy this requirement, as the act must be one “that would not be proper in the regular conduct of the proceeding.” *Land Baron Invs., Inc. v. Bonnie Springs Family Ltd. P’ship*, 131 Nev. \_\_\_, \_\_\_, 356 P.3d 511, 520 (2015) (internal quotation marks omitted).

Here, the only act that Michael has alleged that Angel undertook was to cause Jean to file the action. He did not allege that Angel performed any act in the course of the legal proceedings, much less an act that was improper. As a result, the district court properly dismissed this cause of action for failure to state a claim. *See id.*

#### *Negligence*

Michael’s sixth cause of action was for negligence. In it, he contended that Angel was aware of existing legal documents and that she “took efforts to undercut those documents.” The claim does not explain what the effect of the previous documents was or how they were changed. And while it says that Angel failed to “fully disclose, or secure or seek any requisite waivers or conflicts of interests,” it also does not state what information or conflicts Angel failed to disclose. Finally, the complaint states that Angel breached a fiduciary duty to Jean’s beneficiaries, who were damaged by Angel’s actions.

The district court dismissed this claim on the ground that Michael failed to demonstrate damages. On appeal, Michael asserts that he did demonstrate that he had suffered damages, and thus, that dismissal was improper. Angel counters that Michael’s bare allegation



that he suffered damages was insufficient to state a claim, as this was merely a conclusory allegation.

In order to state a claim for negligence, a plaintiff must allege that the defendant owed the plaintiff a duty of care, the defendant breached that duty, the breach legally caused the plaintiff's injuries, and the plaintiff suffered damages as a result of those injuries. *DeBoer v. Senior Bridges of Sparks Family Hosp.*, 128 Nev. \_\_\_, \_\_\_, 282 P.3d 727, 732 (2012). In this regard, Michael alleged that Angel breached a fiduciary duty by attempting to get Jean to change legal documents disposing of her property and that he was damaged by Angel's actions. But he did not tie these allegations together to show that any alleged breach by Angel caused him injury and damages, such as by alleging facts relating to what documents were involved, whether and to what extent Angel was able to get Jean to modify such documents, or how any changes to those documents legally caused damages to Michael. In the absence of such allegations, we conclude that dismissal of this cause of action for failure to state a claim was proper. *See Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (explaining that, although the court will accept the factual allegations in the complaint as true, "the allegations must be legally sufficient to constitute the elements of the claim asserted").

#### *Tortious Interference*


Finally, although Michael listed tortious interference with economic relationships on the first page of his complaint, he did not include a short, plain statement explaining why he was entitled to relief on that claim. *See* NRCP 8(a) (requiring that the complaint set forth "a short and plain statement of the claim showing that the pleader is entitled

to relief"). While he notes on appeal that he alleged all of the facts to "continue downward through the various claims," he does not explain how any of the facts alleged throughout the complaint stated a claim for tortious interference with economic relationships. Similarly, although he states that he asked for the opportunity to correct the complaint as needed, he did not move for leave to amend his complaint, and he does not explain on appeal how he could have amended his complaint to correct this claim. Accordingly, we conclude that this claim was also properly dismissed.

As each of Michael's claims failed as a matter of law, the district court properly dismissed the complaint. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Stefany Miley, District Judge  
Michael A. Echevarria  
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Eighth District Court Clerk