

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANGELA LOPEZ,  
Appellant,  
vs.  
RENOWN REGIONAL MEDICAL  
CENTER,  
Respondent.

No. 69987

FILED

FEB 28 2017

ORDER OF AFFIRMANCE

ELIZABETH L. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from an order granting a motion to dismiss and from the district court's denial of leave to amend the complaint. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Angela Lopez sued respondent Renown Regional Medical Center for wrongful termination. Lopez's complaint alleged that under NRS Chapter 449, Renown wrongfully demoted Lopez from her position as head housekeeper for reporting other employees' failures to adequately clean the hospital and medical equipment. Renown moved to dismiss the complaint, arguing Lopez's conduct was not protected by NRS 449.205(1)(a) or (b).<sup>1</sup> Lopez countered that her conduct in reporting unsanitary conditions was protected by NRS 449.205(1)(b)(3) through NRS 449.205(2).<sup>2</sup>

---

<sup>1</sup>As relevant here, subsection (1)(a) protects employees from retaliation for making certain reports. Subsection (1)(b) sets forth additional protections for nurses, licensed practical nurses, nursing assistants, and medication aides-certified.

<sup>2</sup>Subsection (2) prohibits a medical facility from retaliating against either an employee or nurses and nursing assistants for taking the actions described in subsection (1). Subsection (1)(b)(3) protects nurses and

*continued on next page...*

The district court held a hearing on the motion to dismiss, during which Lopez admitted her conduct was not protected by NRS 449.205(1)(b) but consecutively argued her conduct was protected by NRS 449.205(1)(a)(2),<sup>3</sup> and then by NRS 449.205(3).<sup>4</sup> The district court inquired whether Lopez wished to amend her complaint to include facts supporting a claim under NRS 449.205(3), but Lopez declined. The district court thereafter indicated it would grant the motion to dismiss, without prejudice. Lopez then asked the district court's leave to amend the complaint, but the district court denied the request, and dismissed the complaint without prejudice.<sup>5</sup>

On appeal, Lopez argues her case turns on whether Renown violated NRS 449.205(3), asserting the district court misread both the statute and the complaint by improperly focusing on inapplicable portions of NRS 449.205. Lopez maintains her complaint alleged Renown demoted her in an attempt to prohibit or restrict her from reporting a baby's death and conditions that may lead to similar deaths. We disagree.

---

*...continued*

nursing assistants against retaliation for reporting to the medical facility concerns regarding conditions that could affect patient safety.

<sup>3</sup>Subsection (1)(a)(2) protects employees from retaliation for reporting a sentinel event to the Division of Public and Behavioral Health of the Department of Health and Human Services.

<sup>4</sup>Subsection (3) prohibits a medical facility from restricting or attempting to restrict employees from taking the actions described in subsection (1).

<sup>5</sup>We do not recount the facts except as necessary to our disposition.

We rigorously review, de novo, a district court's decision to dismiss a complaint under NRCP 12(b)(5), presuming all facts alleged in the complaint are true and drawing all inferences in favor of the plaintiff. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). But, a complaint must set forth facts sufficient to establish the elements of the claim and place the defendant on "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).

The district court did not err by concluding Lopez failed to set forth adequate facts supporting a claim under NRS 449.205(3).<sup>6</sup> Lopez in her complaint did not allege Renown acted to prevent her from reporting a sentinel event or even that she actually knew such an event occurred.<sup>7</sup> Instead, Lopez did not raise her NRS 449.205(3) argument until the hearing on the motion to dismiss. But, when given the opportunity to amend her complaint to include facts supporting a claim under NRS 449.205(3), Lopez expressly declined.<sup>8</sup> Further, as Lopez failed to include

---

<sup>6</sup>We further note the district court correctly concluded Lopez could not assert a claim under NRS 449.205(1)(b)(3) because she is not a nurse or nursing assistant, nor under NRS 449.205(1)(a)(2) because she did not actually report a sentinel event.


<sup>7</sup>Lopez raises a baby's death in her complaint as evidence that her reports to her supervisor were made in good faith, rather than to argue she intended to report the death to the Division of Public and Behavioral Health of the Department of Health and Human Services. In fact, Lopez in her complaint admits she does not know what caused the baby's death.


<sup>8</sup>To the extent Lopez's later written objections to the proposed order raised facts and arguments that may support a claim under NRS 449.205(3)—and assuming, arguendo, this was a proper method of  
*continued on next page...*


the hearing transcript in the appellate record, we presume it supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding appellant is responsible for supplying an adequate appellate record and we presume missing portions of the record support the district court's decision).

Lopez asserts that if the complaint was deficient, the district court should have granted leave to amend. We review the district court's decision granting or denying leave to amend for an abuse of discretion. *Anderson v. Mandalay Corp.*, 131 Nev. \_\_\_, \_\_\_, 358 P.3d 242, 247 (2015). Given that Lopez expressly declined to amend her complaint when asked by the district court and only sought leave to amend as the court issued its decision against her, we conclude the district court did not abuse its discretion. *See, e.g., Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973) (a district court does not abuse its discretion by denying leave to amend where the request was made with undue delay). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

...continued

bringing a claim before the district court—Lopez expressly declined to amend her pleadings before the district court issued its decision.

cc: Hon. Elliott A. Sattler, District Judge  
Paul F. Hamilton, Settlement Judge  
Mark L. Mausert  
Littler Mendelson/Reno  
Washoe District Court Clerk