

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
JOSEPH CHRONISTER; CITY OF
NORTH LAS VEGAS; DARREN COX;
ROGER M. CRAM; JAMES SWEETIN;
ERIC JERGENSON; AND THE STATE
OF NEVADA,
Respondents.

No. 72704

FILED

SEP 07 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Abdul Howard appeals from a district court order dismissing a libel and 42 U.S.C. § 1983 action. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Howard brought suit in April of 2016 against respondents, setting forth claims for libel and violation of his constitutional rights under 42 U.S.C. § 1983. The latest of these alleged wrongful acts occurred in March of 2014. The respondents each moved to dismiss Howard's claims as time-barred under NRCP 12(b)(5). The district court dismissed Howard's claims with prejudice for failure to file within the two-year statute of limitations. This appeal followed.

An order granting a 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); *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). "A complaint should be dismissed

for failure to state a claim '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.'" *Alcantara*, 130 Nev. at 256, 321 P.3d at 914 (quoting *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672).

NRS 11.190(4)(c) states that claims for libel must be filed within two years of the alleged wrongful acts. Claims brought pursuant to § 1983 are treated as personal injury claims, and therefore subject to a personal injury statute of limitations of two years. *See* NRS 11.190(4)(e); *Wilson v. Garcia*, 471 U.S. 261 (1985) (holding that § 1983 claims are to be characterized as personal injury actions and subject to the statute of limitations for personal injury actions). The actions upon which Howard bases all of his claims against respondents occurred more than two years prior to the filing of his complaint here.

Although he failed to file an opposition¹ to any motion to dismiss in the underlying case, on appeal, Howard asserts that the district court erred in dismissing his complaint because he had moved to file a supplemental complaint. This motion did not address the late filing of his complaint, but did raise factual issues that he claimed required an amended pleading. Howard revisits this argument on appeal, seemingly in an effort to suggest that he believes the statute of limitations should be equitably tolled. Equitable tolling focuses on whether or not a reasonable plaintiff would have known of the existence of a possible claim within the limitations period, *City of N. Las Vegas v. State Local Gov't Emp.-Mgmt. Relations Bd.*,

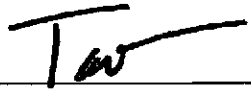
¹Howard did file a "reply" to respondent Cox's motion to dismiss, but his reply only mentioned that he had filed a supplemental complaint.

127 Nev. 631, 640, 261 P.3d 1071, 1077 (2011), and on appeal, Howard failed to present any argument or explanation demonstrating that he was unaware of his potential claims. Thus, this argument is without merit.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James Crockett, District Judge
Abdul Howard
North Las Vegas City Attorney
Clark County District Attorney/Civil Division
Eighth District Court Clerk

²We have considered Howard's remaining arguments and conclude they do not merit a reversal of the district court's order.