

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT STEPHEN JACKSON,
Appellant,
vs.
LAS VEGAS REVIEW JOURNAL; MIKE
BLASKY; DAVID FERRARA; AND
FRANCES MCCABE,
Respondents.

No. 73673

FILED

AUG 10 2018

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

ORDER OF AFFIRMANCE

Robert Stephen Jackson appeals from a district court order dismissing his complaint in a tort action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Jackson, an inmate, sued respondents Las Vegas Review Journal, Mike Blasky, David Ferrara, and Frances McCabe, asserting claims for libel, false light, and conspiracy. For support, Jackson alleged that respondents published four articles regarding his criminal prosecution that included false statements about him. Jackson also alleged that, at some point, a non-party published a document with similar content and that it appeared that Blasky wrote the document on the non-party's behalf. Respondents moved to dismiss Jackson's complaint under NRCP 12(b)(5), asserting, among other things, that certain of his claims were barred by the statute of limitations and that he otherwise failed to state a claim for relief. Jackson, in turn, moved for an extension of time to oppose dismissal, asserting that he was having difficulty accessing the prison law library.

Jackson later filed an untimely opposition to respondents' motion to dismiss. Without addressing that opposition, the district court denied Jackson's request for an extension of time to oppose dismissal and dismissed his claims insofar as they related to the four articles, finding that his libel¹ and false light claims were barred by the two-year limitations period set forth in NRS 11.190(4)(c) and that his derivative conspiracy claim failed as a result. The district court also dismissed Jackson's claims to the extent they were based on the non-party document on the ground that he failed to link respondents to that document. This appeal followed.

Initially, to the extent that Jackson challenges the dismissal of his complaint based on the district court's refusal to grant him an extension of time and subsequent failure to consider his untimely opposition, we discern no basis for relief. As Jackson acknowledges, the district court dismissed his complaint on the merits, rather than treating his failure to file a timely opposition as a consent to granting respondents' motion. See EDCR 2.20(e) (authorizing the district court to construe a failure to oppose a motion as a consent to granting the same). And even if the district court had considered the opposition, that document did not identify anything that would have remedied the defects in his complaint that are discussed below

¹The district court's written order, which was prepared by respondents, uses the terms "libel" and "defamation" interchangeably. But that imprecision has no effect on the disposition of this appeal, as libel is simply a subset of defamation that concerns statements expressed in print or writing. See 53 C.J.S. *Libel & Slander; Injurious Falsehood* § 1, 3 (2017) (explaining that libel is a type of defamation involving statements in print or writing).

and thus, would not have resulted in a different resolution of the underlying case.

Jackson's Claims Relating to the Four Articles

Turning first to the four articles, insofar as Jackson contends that his libel and false light claims were derivative of his civil conspiracy claim and therefore governed by its four-year statute of limitations, see NRS 11.220 (setting forth a four-year limitations period for claims for which a limitations period is not otherwise provided); *Siragusa v. Brown*, 114 Nev. 1384, 1391-92, 971 P.2d 801, 806 (1998) (providing that NRS 11.220 applies to civil conspiracy claims), his argument is unavailing. Indeed, despite Jackson's argument to the contrary, his civil conspiracy claim was derivative of his libel and false light claims.² Cf. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005) (explaining that an underlying fraud claim is a necessary predicate to conspiracy to defraud), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008); see also *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (providing that civil conspiracy requires, among other things, a "concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming another").

²Thus, because we affirm the dismissal of Jackson's libel and false light claims based on NRS 11.190(4)(c), as discussed below, we likewise affirm the court's dismissal of his derivative civil conspiracy claim. See *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 208 (9th Cir. 1991) (concluding that a civil conspiracy claim necessarily failed where the underlying cause of action was barred by the statute of limitations).

Moreover, NRS 11.190(4)(c) applies to libel claims by its express terms and courts have long recognized that that provision's two-year limitations period also applies to false light claims. *See Flowers v. Carville*, 310 F.3d 1118, 1133 n.14 (9th Cir. 2002) (reasoning that false light "has the same statute of limitations as defamation" under Nevada law); *see also* 53 C.J.S. *Libel & Slander; Injurious Falsehood* § 1 (2017). Consequently, we conclude that Jackson failed to show that the district court erred in applying NRS 11.190(4)(c). *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672 (reviewing legal issues in an NRCP 12(b)(5) dismissal order de novo).

Jackson further argues that, in evaluating whether his defamation and false light claims were time barred, the district court should have applied the discovery rule. *See Siragusa*, 114 Nev. at 1392, 971 P.2d at 806 (discussing the discovery rule). In particular, because he was in jail at certain times relevant to this matter, Jackson contends that his defamation and false light claims should not have accrued until he was released on bail on November 16, 2012. But even if the discovery rule applied as Jackson advocates, it would only toll the limitations period as to the article published on June 29, 2011, as the remaining articles were published after his release, and he provides no argument as to why they would not be time barred under the general rule that a claim accrues "when the wrong occurs and a party sustains injuries for which relief could be sought." *See id.* And even as to the June 29, 2011, article, NRS 11.190(4)(c)'s two-year limitations period would have expired on November 16, 2014, under the discovery rule, more than two years before Jackson filed

his complaint.³ Thus, Jackson failed to show that the district court erred in this regard and, as a result, we affirm the dismissal of Jackson's defamation and false light claims to the extent they were based on the four articles.

Jackson's Claims Relating to the Non-Party Document

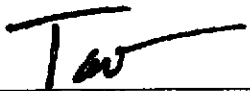
In his informal brief, Jackson challenges the district court's finding that he failed to tie respondents to the non-party document arguing that the content of the document was similar to the four articles. Respondents counter that dismissal was proper because Jackson's complaint, which simply alleged that the non-party document appeared to have been professionally written by Blasky, did not include any specific factual allegations to demonstrate that respondents authored the document. While Jackson filed a reply brief that vaguely asserts that respondents' four articles and the non-party document used similar style and language, he failed to provide any argument or explanation with regard to the sufficiency of the allegations in his complaint with respect to the authorship of the non-party document. Consequently, we decline to consider this issue, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that

³Although Jackson also argues in his reply brief that the statute of limitations should not have accrued until respondents published their September 9, 2013, article, he failed to raise that argument in his opening brief and thereby waived it. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (explaining that arguments not raised in an opening brief are waived). Nevertheless, the disposition of this appeal would be the same even if this proposed accrual date applied.

are not supported by cogent argument), and we therefore affirm the dismissal of Jackson's claims as they relate to the non-party document.

It is so ORDERED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Robert Stephen Jackson
McLetchie Shell LLC
Eighth District Court Clerk

⁴Given our disposition of this appeal, we need not address the parties' remaining arguments.