

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL D.S. EDWARDS,
Appellant,
vs.
ELAN OWNERS' ASSOCIATION, A/K/A
ELAN; EUGENE BURGER
MANAGEMENT CORPORATION, A/K/A
EBMC; FIRSTSERVICE
CORPORATION, D/B/A FIRSTSERVICE
RESIDENTIAL, NEVADA, LLC, D/B/A
FIRSTSERVICE RESIDENTIAL;
ROBERT S. DROZD, A/K/A ROBERT
DROZD; HARRIETT AGNES
ALVARADO, A/K/A HARRIET
ALVARADO; VICTORIA L. GUY, A/K/A
VICTORIA GUY; DIANA C. HUPP,
A/K/A DIANA HUPP; AND RICKY
JOSEPH PADOVESE, A/K/A RICK
PADOVESE,
Respondents.

No. 75535-COA

FILED

JAN 16 2019

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

ORDER OF AFFIRMANCE

Paul D.S. Edwards appeals from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Edwards filed a complaint against respondents alleging defamation, defamation per se, and intentional infliction of emotional distress and seeking a permanent injunction, as well as damages. Based upon the operative complaint, it would appear the allegations relate to a courtesy notice sent to Edwards, on behalf of respondent Elan Owners' Association, indicating that a complaint had been made that he was disrupting other residents by pounding on common walls, disturbing neighbors and using foul language. Edwards, however, specifically asserts

on appeal that his causes of action are not based on the courtesy notice. Respondents moved to dismiss the complaint arguing dismissal was required because Edwards failed to participate in alternative dispute resolution prior to filing his complaint as required by NRS 38.310 because the matter involved claims relating to the interpretation, application or enforcement of a homeowners' association's rules and regulations. They also argued that Edwards' allegations failed to state a claim upon which relief could be granted. Over Edwards' opposition, the district court granted dismissal, finding Edwards was required to participate in alternative dispute resolution and that he failed to state a claim. This appeal followed.

As an initial matter, to the extent that, as the operative complaint suggests, Edwards' claims are based on the courtesy notice he received, he was required to participate in alternative dispute resolution prior to filing suit. See NRS 38.310 (providing that a civil action based on claims relating to "[t]he interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association" may not be commenced unless the action has been submitted to mediation or other program pursuant to the provisions of NRS 38.300 to 38.360 and the "court shall dismiss any civil action" commenced in violation of that provision). As Edwards failed to participate in alternative dispute resolution prior to commencing the underlying case, dismissal was proper. See *id.*

But even though Edwards' complaint indicates that his claims are based on the courtesy notice, Edwards argued, both below and on appeal, that his claims do not stem from the notice or the allegations contained therein. While this argument directly contradicts the plain language of his complaint, if we were to accept Edwards' assertion, a review

of the record before us on appeal reveals that Edwards has otherwise failed to provide any factual allegations to demonstrate the elements of his causes of action. *See W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (stating that a complaint must contain “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”). In sum, Edwards has failed to allege sufficient facts to place respondents on notice of what their allegedly defamatory statements were or even the nature of such statements. *See id.* And as Edwards’ intentional infliction of emotional distress claim relied upon the insufficient defamation allegations, it was likewise insufficient to put respondents on notice of the nature of the claim. Therefore, Edwards has failed to state a claim upon which relief can be granted and dismissal was proper. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (providing that an NRCP 12(b)(5) dismissal is reviewed de novo, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff, and that such a dismissal 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.”).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Douglas

, A.C.J.



Tao

, J.



Gibbons

, J.

cc: Hon. Ronald J. Israel, District Judge
Paul D.S. Edwards
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk