IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIMBERLY GILLESPIE,
Appellant,
vs.
BAGEL CAFÉ, INC., A NEVADA CORPORATION,
Respondent.

No. 73777-COA

ORDER OF AFFIRMANCE

Kimberly Gillespie appeals from a district court order granting summary judgment in a tortious discharge action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Gillespie worked as an at-will employee at Bagel Café for 13 years.[1] Her son, Zachary Grimm, also worked at Bagel Café until he was fired for taking a $70 cash advance without approval. Grimm applied for unemployment benefits, and upon denial, filed an administrative appeal.

Gillespie alleged below, and again on appeal, that Bagel Café terminated her employment because she was unable to persuade Grimm to withdraw his unemployment appeal and because she refused to testify at Grimm's appeal hearing. Bagel Café countered that Gillespie was terminated because one of Bagel Café's owners felt disrespected by Gillespie after the appeal hearing and filed a motion for summary judgment. Gillespie opposed Bagel Café's motion for summary judgment and provided her affidavit, parts of the Bagel Café's owner's deposition testimonies, and Grimm's employee disciplinary reports to support her claim for tortious discharge.

[1]We do not recount the facts except as necessary to our disposition.

On appeal, Gillespie argues that the district court erred in granting Bagel Café's motion for summary judgment when genuine issues of material fact exist as to whether she was tortiously discharged in violation of Nevada public policy.[2] We disagree.

We review an order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). This court is "required to determine whether the trial court erred in concluding that an absence of genuine issues of material fact justified its granting of summary judgment." *Bird v. Casa Royale W.*, 97 Nev. 67, 68, 624 P.2d 17, 18 (1981). "Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (quoting NRCP 56(c)). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029. "However, conclusory statements along with general allegations do not create an issue of material fact." *Michaels v. Sudeck*, 107 Nev. 332, 334,

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[2]Gillespie argues that federal law (namely, Title VII of the Civil Rights Act of 1964) protects an employee who is subject to retaliation for participating, or refusing to participate, in a hearing. But the district court concluded that the firing was not retaliatory, and Gillespie identifies no evidence to the contrary other than her own uncorroborated speculation regarding the employer's motives. Consequently, she has presented no evidence demonstrating that any violation of federal law has occurred, and her brief is devoid of any relevant authority suggesting that federal law prohibits the conduct at issue here. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this court need not consider claims that are not cogently argued or supported by relevant authority).

810 P.2d 1212, 1213 (1991). Additionally, a "moving party is 'entitled to judgment as a matter of law'" if the nonmoving party fails to prove an essential element of the case, which "necessarily render[s] all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

"An at-will employment 'may be terminated at any time for any reason or for no reason.'" *Bigelow v. Bullard*, 111 Nev. 1178, 1183, 901 P.2d 630, 633 (1995) (quoting *Sw. Gas Corp. v. Ahmad*, 99 Nev. 594, 596, 668 P.2d 261, 262 (1983)). A rare exception to this general rule is when an employer terminates an employee in a manner that "violates strong and compelling public policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989). "In such a case the terminated employee may bring a cause of action for tortious discharge." *Bielser v. Prof'l Sys. Corp.*, 321 F. Supp.2d 1165, 1168 (D. Nev. 2004). "To prevail, the employee must be able to establish that the dismissal was based upon the employee's refusing to engage in conduct that was violative of public policy or upon the employee's engaging in conduct which public policy favors . . . ." *Bigelow*, 111 Nev. at 1181, 901 P.2d at 632. However, not all terminations contrary to public policy necessarily implicate a "strong and compelling public policy." *See, e.g.*, *Sands Regent*, 105 Nev. at 439-40, 777 P.2d at 899-900 (holding that Nevada has a public policy against age discrimination but that it is not sufficiently "strong and compelling" to support a claim of tortious discharge).

Additionally, "[t]o support a claim of tortious discharge, the evidence produced by the employee must be concrete and establish outrageous conduct that violates public policy." *State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. 140, 151, 42 P.3d 233, 240 (2002). "[T]he employee's statement must be supported by independent evidence . . . [and]

statements that are conjecture or speculation cannot support a claim of tortious discharge." *Id.* at 151-52, 42 P.3d at 240-41.

Here, Gillespie contends that Nevada has a strong public policy interest in protecting employees that file unemployment benefits claims. However, even if we were to find a strong and compelling public policy in protecting unemployment benefits claims, the protected conduct would be attributable to Grimm, as he was the employee who sought the unemployment benefits, not Gillespie. *See Brown v. Eddie World, Inc.*, 131 Nev. 150, 152-54, 348 P.3d 1002, 1003-05 (2015) (declining to recognize a common law cause of action for third-party retaliatory discharge in violation of public policy, reasoning that tortious discharge occurs "when an employer dismisses an employee in retaliation for *the employee's . . . acts* which are consistent with . . . sound public policy and the common good." (quoting *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 216 (1991))). Furthermore, Gillespie's acts do not constitute refusing to engage in conduct violative of public policy nor engaging in conduct which public policy favors. *See Bigelow*, 111 Nev. at 1181, 901 P.2d at 632; *see also Sands Regent*, 105 Nev. at 440, 777 P.2d at 900 (holding that "public policy tortious discharge actions are severely limited").

Additionally, Gillespie's claim for tortious discharge also fails as she has not established material issues of fact because her claim is not supported by independent evidence[3] and Gillespie admits to speculating as to Bagel Café's intentions. *See State v. Eighth Judicial Dist. Court (Anzalone)*, 118 Nev. at 151-52, 42 P.3d at 240-41 (holding that employee's

[3]The evidence provided by Gillespie is not helpful because it does not support her statements as to why she was fired to support her claim for tortious discharge.

reliance on inadmissible statements in affidavits and the employee's deposition alone were not sufficient to support a tortious discharge claim, and that the employee's impression of the employer's intent was also not sufficient to support a tortious discharge claim, and directing the grant of summary judgment). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of Michael P. Balaban
Palazzo Law Firm
Eighth District Court Clerk