

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAMMY K. CALLAHAN,
Appellant,
vs.
WASHOE COUNTY SCHOOL
DISTRICT; WASHOE COUNTY
SCHOOL DISTRICT VOLUNTEER
SERVICES; JENNI ANDERSON; RUTH
WILLIAMS; JOANNE MCANDREWS;
MELLISA THOROUGHMAN; SARA
ALMO; RICHARD SWANBERG; CHRIS
REICH; AND RANDY DRAKE,
Respondents.

No. 74391-COA

FILED

APR 26 2019

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

ORDER OF AFFIRMANCE

Tammy K. Callahan appeals from a district court order dismissing a contract and tort complaint. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Callahan filed a complaint against respondents alleging various causes of action relating to her allegations that services she provided to special needs students in the Washoe County School District were terminated due to a fabricated allegation that she slapped a child. Respondents moved for dismissal, which was granted over Callahan's opposition, on the basis that Callahan failed to state a claim pursuant to NRCP 12(b)(5).¹ This appeal followed.

¹On December 31, 2018, the Nevada Supreme Court amended the Nevada Rules of Civil Procedure, effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules,

An order granting an 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). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint 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.” *Id.* at 228, 181 P.3d at 672.

As an initial matter, on appeal, Callahan only offers irrelevant argument regarding punitive damages in relation to the dismissal of her harassment, retaliation, negligent infliction of emotional distress, and intentional infliction of emotional distress claims, and has therefore failed to provide any cogent argument against dismissal of these claims. Therefore, we need not consider these arguments and thus, affirm the district court’s dismissal of these claims. *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 are not supported by cogent argument); *see also Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (stating that issues not raised in appellant’s opening brief are waived).

Next, as to the breach of contract claim, Callahan argues that the elements of a valid contract were present, but her arguments and the

December 31, 2018). But those amendments do not affect the disposition of this appeal, as they became effective after the district court granted respondents’ motion to dismiss.

record on appeal² make clear that her services with the school district were voluntary in nature such that no consideration has been identified or alleged that would support a conclusion that a legally enforceable contract existed. *See Cain v. Price*, 134 Nev. ___, ___, 415 P.3d 25, 28 (2018) (stating that to be legally enforceable, a contract must be supported by consideration). As such, Callahan failed to demonstrate that relief is warranted and dismissal is therefore, affirmed.

Turning to the defamation claim, Callahan argues that an email from respondent Sara Almo³ shows that all elements of defamation were met. However, the email states that there was an allegation that Callahan struck a child, and the arguments and record on appeal demonstrate that the statement that such an allegation was made is, in fact, a truthful statement. And, as a false statement is a necessary element of defamation, this argument fails. *See Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). Although Callahan also makes a general statement that she clearly met Nevada's liberal pleading requirement, her brief does not present any actual arguments explaining

²To the extent that the district court should have converted the dismissal motion to one for summary judgment due to the review of documents other than the complaint, the error is harmless as summary judgment as to this claim would have been appropriate and Callahan had an opportunity to present pertinent materials, as she presented various documents supporting her position and had a full opportunity to present her arguments in opposition. *See* NRCP 12(b); *cf.* NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights)

³The email that Callahan appears to be referencing is not actually from respondent Almo, but instead asserts that the sender spoke with Almo and it indicates that Almo told the sender that there was an allegation against Callahan.


how her complaint sets forth sufficient facts, which if taken as true, would support a defamation claim and therefore, she has waived such arguments. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Therefore, dismissal is affirmed.


Next, Callahan asserts that the district court dismissed her claim for interference with contracts based upon a finding that respondent Washoe County School District had no knowledge of her contracts and she failed to establish that any contract existed. She argues this was error because the email noted above clearly indicated the school district was aware of her contracts because the email indicated her client's selection of her to provide tutoring was acceptable to the school district if the client signed a hold harmless agreement. But, a review of the email does not support Callahan's argument, as there is nothing in that email that could be construed as indicating that the school district was aware that Callahan had an existing contract in place with the individual mentioned therein to provide tutoring or otherwise indicate that the school district knew the individual was already Callahan's client. As such, the email does nothing to show, or even support, an allegation that respondents were aware of any contracts that Callahan may have had and thus, this argument fails to provide a basis for relief. *See J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003) (setting forth the elements for intentional interference with contractual relations). And, as with the defamation claim, since she failed to provide any actual argument in her brief that her complaint otherwise sets forth sufficient facts, which if taken as true, would support a claim for intentional interference with contractual relations, she has waived any such arguments. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. Therefore, dismissal is affirmed.

Lastly, we see no abuse of discretion in the district court's denial of Callahan's request to amend the complaint. See *Adamson v. Bowker*, 85 Nev. 115, 121, 450 P.2d 796, 801 (1969) (stating that an appellate court cannot say a trial court abused its discretion in denying leave to amend where there is no showing of the nature or substance of the proposed amendment). As a result, we affirm the denial of the request to amend.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Scott N. Freeman, District Judge
Tammy K. Callahan
Washoe County School District Legal Dep't.
Washoe District Court Clerk