

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MWALIMUS HARRIS,
Appellant,
vs.
M.G.M. ENTERPRISES; NEW YORK
NEW YORK HOTEL AND CASINO;
DENISE KAISER, AN INDIVIDUAL;
GLENN NULLE, AN INDIVIDUAL;
AND GREG GULL, AN INDIVIDUAL,
Respondents.

No. 78056-COA

FILED

DEC 20 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mwalimus Harris appeals from a district court order dismissing a tort complaint. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Harris filed a complaint against respondents MGM Enterprises, New York New York Hotel and Casino (NY NY), Denise Kaiser, Glenn Nulle, and Greg Gull, alleging that he was terminated from his employment with NY NY without an investigation based upon unspecified allegedly false allegations by Kaiser. He asserted claims for intentional infliction of emotional distress (IIED) and negligence. Respondents moved to dismiss for failure to state a claim and, over Harris' opposition, the district court dismissed the matter. This appeal followed.

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.* “[B]ut the allegations must be legally sufficient to constitute the elements of the claim asserted.” *Sanchez ex rel. Sanchez v. Wal-mart Stores*,

Inc., 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). 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.” *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

Here, while Harris summarily asserts on appeal that he has given notice of the nature and basis of his claims and the relief sought pursuant to NRCP 8(a), he fails to provide any cogent argument as to how his allegations meet the elements of the claims asserted or how they would entitle him to relief. *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).

Regardless, a review of Harris’ complaint reveals that he failed to state a claim for IIED because his complaint failed to allege that he suffered severe emotional distress or any facts suggesting the same, which is a necessary element of IIED. *See Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (providing that to establish a claim for IIED, a plaintiff must show: 1) extreme and outrageous conduct with the intention of, or reckless disregard for, causing emotional distress; 2) severe or extreme emotional distress; and 3) causation). Additionally, respondents’ conduct in simply terminating his employment is not conduct that is “outside all possible bounds of decency” and regarded as “utterly intolerable in a civilized community” and he has therefore failed to allege any conduct that could be considered extreme and outrageous. *See Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (stating that “extreme and outrageous conduct is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community” (internal quotation marks omitted)).

Next, as to the negligence claim, he appears to argue that respondents owed him a duty to provide procedural due process prior to

terminating his employment. This claim fails because, under Nevada law, employees are presumed to be at-will and can be terminated at any time for any reason, save for exceptions not relevant here, and Harris' complaint contains no allegations indicating he was not at-will. *See Martin v. Sears, Roebuck & Co.*, 111 Nev. 923, 926-27, 899 P.2d 551, 553-54 (1995). As a result, no such duty was owed to Harris, and his negligence claim therefore fails. *See Sanchez*, 125 Nev. at 824, 221 P.3d at 1280 (providing that in order to establish a claim for negligence, a plaintiff must show a duty, breach of that duty, causation, and damages). Based on the foregoing, we conclude dismissal was proper.¹ *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹To the extent Harris raised arguments that are not specifically addressed herein, we have considered them and conclude they do not provide a basis for relief.

²In light of this disposition, we deny as moot Harris' requests for an order shortening time and for submission.

cc: Hon. Richard Scotti, District Judge
Mwalimus Harris
Jackson Lewis P.C.
Eighth District Court Clerk