IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELDON P. ANDERSON,
Appellant,
vs.
DEAN KAJIOKA; AND LAW OFFICES OF DEAN KAJIOKA,
Respondents.

No. 78137-COA

ORDER OF AFFIRMANCE

Eldon P. Anderson appeals from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Anderson filed a complaint against respondents Dean Kajioka and the Law Offices of Dean Kajioka (collectively Kajioka) asserting claims for intentional infliction of emotional distress (IIED) and negligence for damages he allegedly suffered due to Kajioka's failure to take certain actions in Kajioka's representation of Anderson's son in a criminal matter. Kajioka moved to dismiss for failure to state a claim. Over Anderson's opposition, the district court granted dismissal, concluding Anderson lacked standing. 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.

As an initial matter, to the extent that Anderson was attempting to pursue claims on behalf of his son, rather than himself, he failed to file the complaint on behalf of his son in his alleged capacity as power of attorney. Moreover, because Anderson is not an attorney he could not pursue the matter on behalf of his son. *See Guerin v. Guerin*, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000) (stating that while an individual can represent himself or herself in court, no rule or statute permits a non-attorney to represent any other person in court). Thus, the district court's dismissal for lack of standing was proper in this regard. However, to the extent that Anderson's complaint asserts claims for damages that he personally allegedly suffered, dismissal for lack of standing was improper.

Nonetheless, dismissal was still warranted because, as argued by Kajioka below, Anderson's complaint failed to state a claim upon which relief can be granted.[1] First, with regard to Anderson's negligence claim against Kajioka, this claim necessarily fails because Anderson did not allege any facts sufficient to show a duty running from Kajioka to Anderson. *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). Indeed, considering there was no attorney-client relationship between Anderson and Kajioka, it is not clear how Kajioka could have had any duty of care toward Anderson.

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[1]To the extent that Anderson made requests and raised arguments that are not specifically addressed herein, we have considered the same and conclude they do not provide a basis for relief.

As to the IIED claim, the conduct alleged by Anderson to underpin this claim 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 Kahn v. Morse & Mowbray*, 121 Nev. 464, 478, 117 P.3d 227, 237 (2005) (determining as a matter of law, in a legal malpractice matter, that the plaintiffs failed to allege facts demonstrating extreme or outrageous conduct so as to support an IIED claim); *see also 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)). Thus, Anderson's IIED claim likewise fails.

Based on the foregoing analysis, we conclude that dismissal of the underlying complaint was proper. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672. As a result, we necessarily affirm that decision, albeit on different grounds than those relied on by the district court. *See Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (providing that the appellate courts "will affirm the order of the district court if it reached the correct result, albeit for different reasons.").

It is so ORDERED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Susan Johnson, District Judge
Eldon P. Anderson
Kajioka & Associates
Eighth District Court Clerk