

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ALONSO HIDALGO, III,  
Appellant,  
vs.  
DOMINIC P. GENTILE, ESQ.,  
Respondent.

No. 80351-COA

FILED

SEP 23 2020

ELIZABETH A. CROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Luis Alonso Hidalgo, III appeals from an order of dismissal and the denial of a post-judgment motion for NRCP 60(b) relief in a civil action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

In the proceedings below, Hidalgo filed suit against respondent Dominic Gentile alleging breach of contract and other various claims, all based on the same set of facts. In particular, as relevant here, Hidalgo alleges that his father entered into an agreement with Gentile whereby Gentile was to represent the father and obtain legal representation for Hidalgo in both of their criminal defense matters. Hidalgo alleges that Gentile initially obtained representation for him, but that counsel later withdrew after Gentile failed to pay him, and new counsel was subsequently obtained. Based on these facts, Hidalgo alleges that Gentile breached the contract with Hidalgo's father when his first counsel withdrew due to non-payment. Hidalgo asserts that he suffered damages based on that breach because he was allegedly precluded from preventing his defense theory without his first counsel, and had he gone to trial with his first counsel, he would have been acquitted rather than convicted.

Gentile moved to dismiss the complaint arguing that Hidalgo's allegations amounted to an attorney malpractice case and to proceed on an attorney malpractice claim against a criminal defense attorney, the plaintiff must plead that he has first obtained postconviction relief pursuant to *Morgano v. Smith*, 110 Nev. 1025, 879 P.2d 735 (1994). Hidalgo opposed, arguing that his complaint was not one for attorney malpractice, but was one for breach of contract as he was a third-party beneficiary under the contract between Gentile and Hidalgo's father. The district court dismissed Hidalgo's complaint, finding that his allegations failed to state sufficient facts to support the elements of his claims, such that he failed to state a claim pursuant to NRCP 12(b)(5), and that his allegations likewise failed to provide sufficient notice pursuant to NRCP 8. The district court also concluded that Hidalgo's complaint challenged Gentile's defense strategy decisions and that the complaint asserted that, had different actions been taken during litigation, he would have been exonerated. As such, the court held that the complaint was essentially one for attorney malpractice, and was therefore not yet ripe, such that dismissal was required because Hidalgo failed to plead that he obtained postconviction relief.

After the district court dismissed Hidalgo's complaint, the case was administratively closed. Hidalgo then filed a motion to alter or amend the judgment, pursuant to NRCP 59(e) and NRCP 60(b); a motion for leave to amend the complaint; and a motion to reopen the case. The district court denied all three motions, concluding that Hidalgo's proposed amended complaint failed to cure the defects of his first complaint, that he failed to demonstrate he was entitled to relief from the dismissal order, and in light of the foregoing, there was no basis to reopen the case. This appeal followed.

On appeal, Hidalgo challenges the district court's dismissal of his complaint and the denial of his post-judgment motions. 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 [him] to relief.” *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

We agree with the district court that, despite how Hidalgo titled his claims, his allegations assert that he is entitled to damages based on counsel's defense strategy, that his counsel failed to present the defense theory he desired, and that certain experts were not called—all of which sound in a claim for legal malpractice or ineffective assistance. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 809, 312 P.3d 491, 498-99 (2013) (explaining that this court analyzes “a claim according to its substance, rather than its label”). Thus, to survive dismissal, Hidalgo was required to plead that he has obtained postconviction relief. *Morgano*, 110 Nev. at 1028-30, 879 P.2d at 737-38. Because Hidalgo failed to so plead, dismissal was proper on these grounds. *Id.*


Regardless, we note that, even if Hidalgo's complaint could be construed as one strictly for breach of contract, as Hidalgo asserts, dismissal was still warranted. As the district court concluded, Hidalgo's complaint

failed to set forth sufficient facts to support the elements of his claims. Here, Hidalgo alleged that pursuant to the contract, Gentile was required to obtain defense counsel for Hidalgo, which Hidalgo admits Gentile did—by obtaining his first counsel and then replacing him with a new attorney once the first attorney withdrew. Hidalgo does not allege that the contract required Gentile to provide a particular attorney to represent him, nor does he allege that once his first counsel withdrew, Gentile failed to provide other counsel. Thus, construing Hidalgo’s allegations as true, he has failed to allege sufficient facts to support a breach of contract claim and dismissal was warranted. *See Sanchez*, 125 Nev. at 823, 221 P.3d at 1280; *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>To the extent Hidalgo raises additional arguments that are not specifically addressed in this order—including the challenges to his post-judgment requests for relief—we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Rob Bare, District Judge  
Luis Alonso Hidalgo, III  
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP/Las Vegas  
Eighth District Court Clerk