

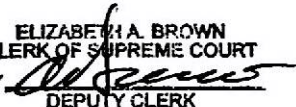
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AHMED ELNENAEY,  
Appellant,  
vs.  
JOSEF M. KARACSONYI, ESQ.,  
Respondent.

No. 79785-COA

**FILED**

DEC 30 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ahmed Elnenaey appeals from a district court order of dismissal in a civil tort action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

In the proceedings below, Elnenaey filed suit against respondent Josef Karacsonyi alleging defamation per se. In particular, Elnenaey alleged that Karacsonyi represented Mervat Osman, Elnenaey's father's ex-wife, in a divorce proceeding with Elnenaey's father. In that proceeding, Karacsonyi filed an opposition to Elnenaey's motion to vacate the decree of divorce. In the opposition, Karacsonyi made allegedly defamatory statements about Elnenaey and included an exhibit supporting the assertions. In the instant matter, Elnenaey filed a complaint for defamation per se against Karacsonyi arising from the alleged defamatory statements made in the divorce matter. Karacsonyi moved to dismiss, asserting that the litigation privilege applied and that the claim was barred by the statute of limitations. Elnenaey opposed and counter-moved to amend the complaint to include additional defendants—other attorneys in Karacsonyi's firm, the firm itself, and Osman (the proposed defendants)—and additional claims.

As to the proposed additional claims, Elnenaey alleged that Karacsonyi, the attorneys in his firm, and the firm itself were all liable for defamation per se, injurious falsehoods, intentional infliction of emotional distress, and invasion of privacy through disclosure of false light based on the allegedly defamatory conduct in the opposition filed in the divorce matter. Elnenaey also asserted that the attorneys and firm were liable for tortious interference with a contractual right and intentional misrepresentation, and that Osman was liable for conversion based on the decree of divorce awarding Elnenaey's father certain Egyptian bank accounts. Elnenaey alleges that he was awarded the balance of the Egyptian bank accounts in his father's divorce from his mother (the first decree), such that the accounts were not community property subject to division by the district court in his father's divorce from Osman (the second decree). Elnenaey also contends that the proposed defendants were aware of his father's prior divorce decree and included it as a proposed exhibit for the divorce trial between his father and Osman, but then failed to admit the decree at trial, to his detriment.

The district court granted Karacsonyi's motion to dismiss, concluding that the litigation privilege applied, and denied Elnenaey's counter-motion, concluding that amendment would be futile. Specifically, the district court found that the proposed amended complaint was based on the same underlying allegations regarding the alleged defamation and that the identification of exhibits to possibly be used by a party does not mandate their use. This appeal followed.

On appeal, Elnenaey challenges the district court's order dismissing his complaint and denying his motion to amend. Elnenaey asserts that the litigation privilege does not apply and that, even if it does,

some of his proposed claims were not based on the alleged defamation such that the district court erred in denying his request to amend based on the litigation privilege, as to those proposed claims. This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). An order granting a motion to dismiss is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complainant. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). “[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.

Here, the district court dismissed Elnenaey's complaint for defamation per se on the basis that the litigation privilege precluded the claim. “The litigation privilege immunizes from civil liability communicative acts occurring in the course of judicial proceedings, even if those acts would otherwise be tortious.” *Greenberg Traurig v. Frias Holding Co.*, 130 Nev. 627, 628, 331 P.3d 901, 902 (2014). The privilege applies to “communications uttered or published . . . as long as the statements are in some way pertinent to the subject of the controversy.” *Id.* at 630, 331 P.3d at 903 (internal quotation marks omitted). Based on our review of the record, we discern no error in the district court's conclusion that the litigation privilege applied to Elnenaey's defamation per se complaint. Indeed, Elnenaey's allegation was based on Karacsonyi's communicative

acts occurring in the course of a judicial proceeding. See *Fink v. Oshins*, 118 Nev. 428, 433-34, 49 P.3d 640, 644 (2002) (explaining that “courts should apply the absolute privilege liberally, resolving any doubt in favor of its relevancy or pertinency” (internal quotation marks omitted)). We likewise are unpersuaded by Elnenaey’s argument that the alleged defamatory statements were irrelevant to the proceedings. See *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 61, 657 P.2d 101, 104 (1983) (providing that “the test of relevancy is very broad” and that “[t]he defamatory material need not be relevant in the traditional evidentiary sense, but need have only ‘some relation’ to the proceeding; so long as the material has some bearing on the subject matter of the proceeding, it is absolutely privileged”).

Elnenaey also challenges the district court’s denial of his motion to amend the complaint. This court reviews the district court’s denial of a motion to amend for an abuse of discretion. *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). And the district court need not grant leave to amend if the proposed amendment would be futile. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Ct. App. 2015). Here, the district court determined Elnenaey’s proposed amendment would be futile because his proposed amended complaint was based on the same underlying allegations regarding the alleged defamation and that the identification of exhibits to possibly be used by a party does not mandate their use.

Elnenaey argues that the district court improperly denied his request to amend because the court incorrectly applied the litigation privilege and because some of his proposed amended claims were not based on the alleged defamation. In light of our conclusion that the district court did not err in applying the litigation privilege, we likewise conclude that the

district court did not abuse its discretion in concluding that amendment would be futile as to those claims based on the alleged defamation. *Id.* at 289, 357 P.3d at 973; *see Sutton*, 120 Nev. at 988, 103 P.3d at 19.

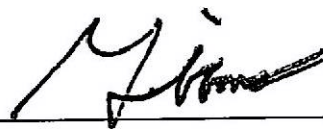
As to those proposed claims that Elnenaey asserts were not based on the alleged defamation (tortious interference with a contractual right, intentional misrepresentation, and conversion), we agree with the district court that amendment would be futile as Elnenaey's proposed amended complaint failed to state a claim. *See Nutton*, 131 Nev. at 289, 357 P.3d at 973 ("A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim, such as one which would not survive a motion to dismiss under NRCP 12(b)(5) or a last-second amendment alleging meritless claims in an attempt to save a case from summary judgment." (alteration and internal quotation marks omitted)). As the district court noted, the proposed defendants' inclusion of Elnenaey's father's first divorce decree as an exhibit did not require its admission at trial. Moreover, Elnenaey was not a party to the divorce action. Thus, although Elnenaey alleges that he relied on the document's admission at his father's divorce trial from Osman, these allegations do not give rise to a cause of action. *See Nutton*, 131 Nev. at 289, 357 P.3d at 973.


Additionally, although Elnenaey contends that the second decree awarded his father certain Egyptian bank accounts as his sole and separate property, which rightfully belonged to Elnenaey pursuant to the first decree and should not have been divided by the district court, the complaint similarly fails to state a claim. Notably, Elnenaey's complaint concedes that the first decree ordered the parties to use certain funds in the parties' Egyptian bank accounts for their children's educational benefit, with any remaining funds to be distributed to the children (presumably,

including Elnenaey). And the second decree only provides that certain Egyptian bank accounts were Elnenaey's father's sole and separate property. Thus, nothing in the second decree addresses or modifies the funds previously awarded in the first decree, but only confirms that the accounts were Elnenaey's father's sole and separate property, and Elnenaey's complaint fails to assert any set of facts that would entitle him to relief. *See Sanchez*, 125 Nev. at 823, 221 P.3d at 1280. Under these circumstances, we cannot conclude that the district court abused its discretion in concluding that Elnenaey's proposed amended complaint would be futile and denying his motion to amend. *See Nutton*, 131 Nev. at 289, 357 P.3d at 973.

Accordingly, we

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

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

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

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

---

<sup>1</sup>Insofar as Elnenaey raises arguments that are not specifically addressed in this order, 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. We similarly deny all other requests for relief currently pending before this court.

cc: Hon. Mark R. Denton, District Judge  
Ahmed Elnenaey  
The Dickerson Karacsonyi Law Group  
Eighth District Court Clerk