

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEY KADMIRI,
Appellant,
vs.
NEW CASTLE CORP.; EXCALIBUR
HOTEL; AND SPI ENTERTAINMENT,
Respondents.

No. 81900-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Ed Jones*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joey Kadmiri appeals from a district court order granting a motion to dismiss in a tort action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

In August of 2019, Kadmiri filed a complaint, and then an amended complaint against respondents Excalibur Hotel and Casino, MGM Grand Resorts International¹ as the purported owner of Excalibur, and SPI Entertainment (collectively, Excalibur). Kadmiri's claims arise out of an incident that occurred at the Excalibur in March of 2014 where Kadmiri was allegedly "viciously attacked and brutally beaten" by the members of the performing group Thunder From Down Under, and had to be admitted to the hospital. Kadmiri alleged that Thunder From Down Under falsely reported that he stole items from their dressing room and that he attacked members of the group in order to cover up the assault. Following his release

¹Below, the district court substituted respondent New Castle Corp. in the place of MGM Grand Resorts International as the correct owner/operator of the Excalibur Hotel Casino. Therefore, the clerk of this court is directed to amend the caption on this court's docket in accordance with this order's caption.

from the hospital, Kadmiri was arrested and booked into Clark County Detention Center on charges of attempted robbery and attempted murder of the members of Thunder From Down Under. Although the first criminal trial resulted in a mistrial, Kadmiri eventually pleaded guilty to the charges.

As part of the criminal proceedings, Kadmiri attempted to subpoena Excalibur and obtain video footage of the incident to prove his innocence. However, Excalibur maintained that it did not have any relevant video footage, and further informed Kadmiri that the security camera located in or around the area where the incident allegedly occurred was a decoy camera to discourage theft. Thus, the video footage produced by Excalibur did not capture the incident.

As relevant here, Kadmiri filed the underlying tort action, primarily contending that Excalibur concealed, lost, or destroyed the video footage that could have served as exculpatory evidence in his criminal trial. Kadmiri also alleges that Excalibur smeared his reputation by allowing newspapers and other news outlets to report on the incident without releasing the video footage showing that Kadmiri was not the one who instigated the assault. In the alternative, Kadmiri also appears to allege that Excalibur was negligent when it failed to post a sufficient number of security cameras to record the incident. Finally, in his prayer for relief, Kadmiri sought injunctive relief (in the form of compelling Excalibur to turn over the video footage) and compensatory and punitive damages in the amount of \$500,000,000.

After filing his complaint, Kadmiri filed several motions for extension of time to serve, along with motions for service by publication, and alleged that as an incarcerated pro se litigant he was having difficulties

serving Excalibur and the MGM. Accordingly, the district court granted Kadmiri's request for an extension of time via minute order and extended the time for service of process to February 11, 2020. However, the district court refused to allow for service by publication. Consequently, Kadmiri, through the civil process server at the Clark County Sheriff's office, attempted to serve Excalibur at its premises on or around November 8, 2019. Excalibur refused to accept service at that location, and instead left instructions with the process server for proper service upon its registered agent in Carson City.

Although service was attempted in November, Kadmiri did not receive the "not found affidavit" from the Sheriff's office until January 6, 2020. Nevertheless, Kadmiri did not attempt service to the new address at this time, but instead filed another motion for an extension of time and request for service by publication on January 10, 2020. Thereafter, the district court denied the motion via minute order on February 13, 2020, two days after the original extended time for service had expired. But because the minute order only expressly denied his request for service by publication, Kadmiri continued to attempt service on Excalibur, and finally succeeded in serving Excalibur's registered agent in Carson City on April 8, 2020.

Believing that he had timely and properly served the defendants, Kadmiri filed a motion for default judgment, which the district court denied as (1) Kadmiri had failed to first obtain a default from the clerk; and (2) Kadmiri had failed to timely serve the summons and complaint on the defendants. Additionally, because the district court found that Kadmiri's service on Excalibur's registered agent was untimely, the district court ordered the service quashed. However, the district court also

invited Kadmiri to file another motion for an extension of time with proper analysis under *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 597, 245 P.3d 1198, 1201 (2010) (providing relevant factors to determine good cause for filing an untimely motion for extension of time to complete service of process), and *Scrimmer v. Eighth Judicial District Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000) (providing factors that constitute good cause for extending the time to complete service of process). But Kadmiri declined to do so at that time, and instead filed an appeal, which was subsequently dismissed. *See Kadmiri v. MGM Grand Resorts Int'l*, Docket No. 81619 (Order Dismissing Appeal, August 24, 2020).

Shortly thereafter, counsel for the Excalibur filed a motion to dismiss under NRCP 12(b)(5), arguing that Kadmiri's claims appeared to be based upon "[a]n action for libel, slander, assault, battery, false imprisonment or seduction," and were therefore time-barred by the two-year statute of limitations under NRS 11.190(4)(c). Kadmiri, who believed that he had properly served Excalibur, filed two motions to strike Excalibur's motion to dismiss, arguing that the motion to dismiss was untimely under NRCP 12(a)(1)(A)(i) as it was filed over 21 days after he served the summons and complaint, and also arguing that the statute of limitations did not apply under NRS 11.180(3), which allows for a person imprisoned on criminal charges to file an action for the recovery of real property within two years after being released.

Ultimately, the district court held a hearing on the motion and issued an order granting the motion to dismiss on the basis that Kadmiri

had failed to file an opposition to the motion under EDCR 2.20,² and because the two-year statute of limitations for Kadmiri's claims (which began to run in 2014) had expired by the time he filed his initial complaint in August of 2019. Kadmiri now appeals.

On appeal, Kadmiri contends, among other things, that the district court erred in granting the motion to dismiss. This court reviews an order granting an NRCP 12(b)(5) motion to dismiss de novo, accepting all factual allegations in the complaint as true, and drawing all inferences in the plaintiff's favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Dismissal 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. Where the statute of limitations has run, dismissal is appropriate. *In re AMERCO Derivative Litig.*, 127 Nev. 196, 228, 252 P.3d 681, 703 (2011).

Having considered Kadmiri's arguments and the record on appeal, we conclude that the district court properly dismissed Kadmiri's complaint. Here, Kadmiri argues that the district court erred in granting the motion to dismiss as it was filed "110 days after service" and should have been stricken. But this argument is inapposite, as Kadmiri never properly served the summons and complaint on Excalibur after the district court quashed his untimely service. Accordingly, to the extent that any deadlines under NRCP 12 applied to Excalibur's motion to dismiss, those

²We note that Kadmiri filed a motion to strike and a "notice of objection" in response to Excalibur's motion to dismiss. While these documents were not a formal opposition to the motion, they nevertheless contained Kadmiri's arguments in opposition to the motion to dismiss.

deadlines had not yet run as Kadmiri never completed proper service of the summons and complaint.

Kadmiri further argues that the district court erred by determining that a two-year statute of limitations applied to bar the causes of action in his complaint, and argues that the correct statute of limitations is set forth in NRS 11.190(1) (providing a six-year statute of limitations for actions regarding a written contract or relating to judgments). But Kadmiri failed to raise this argument below, and therefore this argument has been waived on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”); *see also Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (“[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.” (internal quotation marks omitted)).


Nevertheless, we note that Kadmiri’s complaint appears to present causes of action for negligence and libel. *See Perry v. Terrible Herbst, Inc.*, 132 Nev. 767, 769, 383 P.3d 257, 259 (2016) (reviewing judgment on the pleadings under NRCP 12(c) on statute of limitations grounds de novo). Accordingly, the corresponding statute of limitations for those claims is two years under NRS 11.190(4)(c) and (e). Therefore, the statute of limitations on these claims, which accrued in 2014, had run by the time Kadmiri filed his complaint in 2019. Accordingly, we conclude the district court did not err when it determined that the statute of limitations had run on Kadmiri’s claims. *See AMERCO*, 127 Nev. at 228, 252 P.3d at 703. Thus, for the reasons set forth above, we conclude that the district

court did not err when dismissing Kadmiri's complaint under NRCP 12(b)(5). *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.³

Accordingly we,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 1
Joey Kadmiri
Pyatt Silvestri
Eighth District Court Clerk

³Insofar as Kadmiri 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.