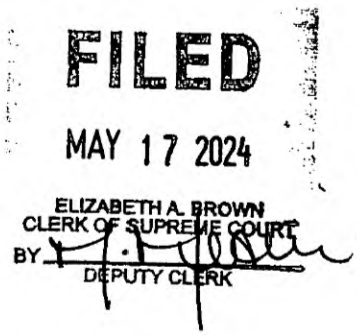
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID VUONO,
Appellant,
vs.
THE STATE OF NEVADA, EX REL. BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION ON BEHALF OF DESERT RESEARCH INSTITUTE,
Respondents.

No. 86304-COA



ORDER OF AFFIRMANCE

Dr. David Vuono appeals a district court order dismissing a complaint in an employment matter. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Dr. Vuono filed a complaint alleging, in relevant part, that he was tortiously discharged from his employment with respondent State of Nevada ex rel. Board of Regents for the Nevada System of Higher Education on behalf of the Desert Research Institute (DRI).[1] Dr. Vuono claimed that DRI had agreed to pay him additional compensation for undertaking additional duties on a work project but later reneged on the agreement. He challenged that decision, and the following day, DRI terminated him—ostensibly for illegally recording a work meeting with a colleague in violation of NRS 396.970. However, Dr. Vuono alleged that the true reason for his termination was his attempt to have DRI "stand[ ] on the agreement"

[1]Dr. Vuono also asserted a breach of contract claim, which is not at issue on appeal.

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to pay him the higher wage that he was originally promised, which he claimed fostered an important public policy.

DRI filed a motion to dismiss under NRCP 12(b)(5), arguing that the conduct Dr. Vuono alleged did not fall under the very limited types of conduct which constitute tortious discharge. Dr. Vuono opposed DRI's motion to dismiss, and DRI filed a reply to his opposition. The district court granted DRI's motion to dismiss Dr. Vuono's tortious discharge claim.[2] This appeal followed.

On appeal, Dr. Vuono contends that the district court erred in dismissing his tortious discharge claim.

This court reviews de novo an order granting a motion to dismiss for "failure to state a claim upon which relief can be granted." NRCP 12(b)(5); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). In doing so, we assume that all facts alleged in the complaint are true, and we review all legal conclusions de novo. *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

"An at-will employment 'may be terminated at any time for any reason or for no reason.'" *Bigelow v. Bullard*, 111 Nev. 1178, 1183, 901 P.2d 630, 633 (1995) (quoting *Sw. Gas Corp. v. Ahmad*, 99 Nev. 594, 596, 668 P.2d 261, 262 (1983)). A rare exception to this general rule is when an employer terminates an employee in a manner that "violates strong and compelling public policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989). "In such a case the terminated employee may

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[2]Although Dr. Vuono's breach of contract claim survived DRI's motion to dismiss, the parties later stipulated to dismiss the action with prejudice pursuant to NRCP 41(a)(1) but permitting Dr. Vuono to reserve his appellate rights as to the district court's dismissal of his tortious discharge claim.

bring a cause of action for tortious discharge." *Bielser v. Prof. Sys. Corp.*, 321 F. Supp. 2d 1165, 1168 (D. Nev. 2004). "To prevail, the employee must be able to establish that the dismissal was based upon the employee's refusing to engage in conduct that was violative of public policy or upon the employee's engaging in conduct which public policy favors." *Bigelow*, 111 Nev. at 1181, 901 P.2d at 632.

However, the fact that an individual is terminated for reasons that run contrary to public policy does not mean that the termination necessarily implicates such a strong and compelling public policy so as to support a tortious discharge claim. *See Sands Regent*, 105 Nev. at 439-40, 777 P.2d at 899-900 (holding that, while Nevada has a public policy against age discrimination, it is not "sufficiently strong and compelling to warrant another exception to the 'at-will' employment doctrine"). As our supreme court has recognized, tortious discharge actions are "severely limited" and can only be maintained in certain "rare and exceptional cases." *Ceballos v. NP Palace, LLC*, 138 Nev., Adv. Op. 58, 514 P.3d 1074, 1078 (2022) (internal quotation marks). To that end, the supreme court has found a violation of strong and compelling public policy sufficient to justify a tortious discharge claim only in five narrow categories of cases: "(1) for refusing to work under conditions unreasonably dangerous to the employee, (2) for refusing to engage in illegal conduct, (3) for filing a workers' compensation claim, (4) for reporting the employer's illegal activities to outside authorities, and (5) for performing jury duty." *Id.* (internal quotation marks and citations omitted).

Here, Dr. Vuono alleged that the true reason he was terminated was because he attempted to make DRI "stand[ ] on the agreement" to pay him increased wages. And he maintains that this conduct fostered an

important public policy so as to allow him to state a claim for tortious discharge. However, this alleged conduct has not been recognized as one of the "rare and exceptional cases" that the supreme court has permitted to proceed as a tortious discharge claim "because not allowing the claim would offend strong and compelling public policy." *See id.* at 1078, 1079 (internal quotation marks omitted). As previously noted, even where, for example, the discharge involved allegations of age discrimination, the supreme court has declined to find that such conduct so offended strong and compelling public policy to justify creating an exception to the at-will employment doctrine by recognizing a claim for tortious discharge based on such conduct. *See Sands Regent*, 105 Nev. at 439-40, 777 P.2d at 899-900. And while Dr. Vuono makes a conclusory argument that "[s]tanding on the agreement for pay fosters a public policy reflected in the wage laws," he has failed to demonstrate or explain why this alleged conduct presents such a strong and compelling public policy issue that it should be recognized as one of the "rare and exceptional cases" where a tortious discharge claim can be maintained. *Ceballos*, 138 Nev., Adv. Op. 58, 514 P.3d at 1078.

Thus, for the reasons set forth above, we decline to extend the very narrow categories of tortious discharge exceptions to the at-will employment doctrine recognized by the supreme court to allow a tortious discharge claim to proceed under the circumstances presented here.[3] *See id.* Therefore, we conclude that the district court properly determined that Dr. Vuono failed to state a claim upon which relief could be granted, and

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[3]While Dr. Vuono acknowledges that there is an alternate statutory remedy available to him to pursue unpaid wages, because he has failed to demonstrate that his claim involves a sufficiently strong public policy concern such that it rises to the level of tortious discharge, we need not address his argument that the statutory remedy is insufficient.

consequently, did not err by dismissing Vuono's tortious discharge claim. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Jeffrey A. Dickerson
Desert Research Institute
Washoe District Court Clerk