


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA BRESLAW,
Appellant,
vs.
PETER COOPER,
Respondent.

No. 88336-COA

FILED
SEP 16 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lisa Breslaw appeals from a district court order dismissing her complaint in a tort action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

This is the third appeal relating to Breslaw's litigation against respondent Peter Cooper, wherein she alleges that Cooper committed tortious conduct against her by posting libelous statements on the social media platform Reddit.com in 2019. *See Breslaw v. Cooper (Breslaw I)*, Docket No. 84072-COA, 2022 WL 4153329, (Nev. Ct. App., Sep. 12, 2022) (Order of Affirmance); *Breslaw v. Cooper (Breslaw II)*, Docket No. 86570-COA, 2023 WL 6457825 (Nev. Ct. App. Oct. 3, 2023) (Order of Reversal and Remand). In *Breslaw I*, this court affirmed the district court's dismissal without prejudice of the action for lack of personal jurisdiction. In *Breslaw II*—filed in the same action underlying this appeal—this court reversed and remanded the district court's order dismissing Breslaw's complaint as barred by the statute of limitations under NRCP 12(b)(5) for the proper consideration and application of the extraordinary circumstances tolling

factor under *Fausto v. Sanchez-Flores*, 137 Nev. 113, 118, 482 P.3d 677, 682 (2021). See *Breslaw II*, Docket No. 86570-COA, at*2.

Following this court's remand in *Breslaw II*, the district court ordered supplemental briefing and held a hearing on whether Breslaw's complaint should be subject to equitable tolling. The parties addressed this issue, and Cooper re-raised the issue of personal jurisdiction, which he had previously raised in his initial motion to dismiss but the court had not addressed based on its dismissal under expiration of the statute of limitations. After considering the briefing and oral arguments of the parties, the district court entered an order granting Cooper's motion to dismiss the complaint, incorporating its previous order by reference, and—as instructed by this court—making the express findings required by *Fausto*. Specifically, in its fourteen page order, the district court found, among other things, that (1) Breslaw's mental health issues did not qualify as an extraordinary circumstance that warranted equitable tolling, in part due to her diligence in pursuing this action in other respects, but also because she pursued litigation in two separate cases during the same time period in which she sought equitable tolling in this case; (2) that Breslaw's previously "undiscovered" fact that she had named a UNLV professor in her Reddit posts and/or comments was insufficient to warrant equitable tolling as she had enough information regarding her injuries to timely bring her complaint, and (3) that even if equitable tolling was warranted, these new factual allegations contained within the complaint remain insufficient to confer personal jurisdiction over Cooper. Accordingly, the district court

dismissed Breslaw's complaint with prejudice on both statute of limitations and personal jurisdiction grounds, and Breslaw now appeals.

Breslaw raises three primary issues on appeal: (1) that the district court abused its discretion in its analysis of the *Fausto* factors; (2) that the district court inappropriately converted the motion to dismiss to a motion for summary judgment by considering issues outside the pleadings; and (3) that the district court abused its discretion when it considered whether it had personal jurisdiction over Cooper on remand. However, because we conclude that the personal jurisdiction issue is dispositive, we need not address Breslaw's remaining issues.

On appeal from the district court's dismissal order, Breslaw fails to directly challenge the district court's personal jurisdiction analysis and she has therefore waived any challenge to the court's specific findings and legal conclusions regarding that issue. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Instead, Breslaw asserts that the district court somehow "waived" its ability to rule on personal jurisdiction because it did not rule on the issue during the proceedings underlying *Breslaw II*, and because it indicated during the hearing on the underlying motion to dismiss that "the dismissal is not going to be based on whether or not there's personal jurisdiction."

With regard to Breslaw's assertion that the district court "waived" the personal jurisdiction issue by failing to rule on personal jurisdiction in the dismissal order underlying *Breslaw II*, this argument is without merit, as there is nothing prohibiting the district court from

revisiting the alternative grounds for dismissal advanced by Cooper in his initial request for dismissal on remand, even if the district court did not reach those issues in its original dismissal order. Thus, Breslaw's assertion in this regard does not constitute a cogent argument to support the proposition that dismissal on personal jurisdiction grounds was improper. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued).

As to the oral statements the district court made at the hearing on the motion to dismiss on remand that suggested, in conflict with the written dismissal order, that personal jurisdiction would not be the basis for dismissal, it is well known that "written orders control over conflicting statements made at a hearing," *Eby v. Johnston Law Office, P.C.*, 138 Nev., Adv. Op. 63, 518 P.3d 517, 526-27 (Ct. App. 2022), and here, Cooper has consistently brought his objections to personal jurisdiction before the court in such a manner that Breslaw cannot say that she was unduly surprised by their consideration.¹

Breslaw also asserts that the district court's determination relating to personal jurisdiction is erroneous as this court's order in *Breslaw I* allegedly indicated that Nevada would have personal jurisdiction over Cooper if it could be demonstrated that a Nevada resident was identified in

¹Indeed, we note that both parties presented argument regarding personal jurisdiction at the hearing on the motion to dismiss following remand.

the Reddit posts. However, this argument misconstrues our decision in *Breslaw I*.

In that order, we acknowledged that the district court's focus in determining specific personal jurisdiction "is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." See *Breslaw I*, No. 84072, 2022 WL 4153329, at *3 (quoting *Walden v. Fiore*, 571 U.S. 277, 289 (2014)). In doing so, we concluded that


despite Breslaw's assertion that Cooper expressly mentioned UNLV in his posts and comments (thus purportedly forming a contact with Nevada), a careful review of the screenshots provided by Breslaw in the record on appeal reveal that neither she nor Cooper ever mentioned the name of the university or the faculty members involved, nor does it include any competent evidence that Cooper purposefully directed those posts towards Nevada, rather than towards Breslaw, who happened to be a Nevada resident.

Id. at *3. Although this court acknowledged that the complaint in *Breslaw I* did not contain the name of the university or faculty members involved, this court did not hold that mere allegations of the same would be sufficient to confer personal jurisdiction over Cooper. Indeed, there is nothing in our decision in *Breslaw I* that could be construed as suggesting the same. We therefore conclude Breslaw's arguments related to this point are without merit.

Thus, because Breslaw failed to challenge the district court's findings and legal conclusions related to personal jurisdiction, and her

alternative challenges to the dismissal on personal jurisdiction grounds are without merit, we affirm the order of the district court dismissing Breslaw's complaint with prejudice on personal jurisdiction grounds.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Maria A. Gall, District Judge
Lisa Breslaw
Raich Law PLLC
Eighth District Court Clerk