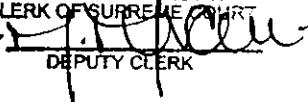


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA BRESLAW,
Appellant,
vs.
STATE OF NEVADA BOARD OF
REGENTS OF THE NEVADA SYSTEM
OF HIGHER EDUCATION ON BEHALF
OF THE UNIVERSITY OF NEVADA,
LAS VEGAS,
Respondent.

No. 88818-COA

FILED
FEB 19 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lisa Breslaw appeals from a district court order dismissing her complaint with prejudice under NRCP 12(b)(5). Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Breslaw is an alumna of respondent the State of Nevada Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada Las Vegas (UNLV). In or around the time of the 2018-2019 school year, Breslaw developed a self-described limerence for one of her history professors, Dr. Maria Gallo, who Breslaw asked for a letter of recommendation into graduate school. After several conversations with Dr. Gallo (which Breslaw interpreted as unprofessional and terse), Breslaw reported Dr. Gallo to Dr. Andrew Kirk, the chair of the history department, who informed her that a formal complaint had been filed against Dr. Gallo on Breslaw's behalf. Breslaw then "spent several months contacting every UNLV administrative office zealously trying to retract the complaint," and attempted to explain to Dr. Gallo that her anxiety disorder caused her to misread the situation. Her attempts were unsuccessful, which culminated

in a “public mental breakdown on Reddit” between October and December of 2019 wherein Breslaw made several public reddit posts seeking advice on the situation.

During this time, Reddit user u/thestickystickman collected Breslaw’s posts and posted a summary of Breslaw’s Reddit activity in the r/SubredditDrama forum, where it purportedly reached viral status. Eventually, UNLV’s general counsel allegedly learned of the post and sent Breslaw a cease and desist letter informing her that she was no longer permitted to contact any of UNLV’s faculty or staff for any reason. Ultimately, neither Dr. Gallo nor any other faculty at UNLV agreed to write Breslaw a letter of recommendation, and Breslaw’s applications to the graduate programs at UNLV and the University of Nevada Reno (UNR) were denied.

In June 2023—roughly four years later—Breslaw initiated the instant action against two John Doe defendants asserting claims for libel, slander, and intentional infliction of emotional distress (IIED). Breslaw subsequently filed a first amended complaint naming UNLV as defendant in two causes of action: her IIED claim and a new tortious interference with prospective economic advantage claim in February 2024. In lieu of filing an answer, UNLV moved to dismiss Breslaw’s complaint under NRCP 12(b)(5), arguing that the statute of limitations for the IIED claim had expired, and that Breslaw had failed to demonstrate any of the five elements necessary to prove her tortious interference claim. In response, Breslaw argued that her IIED claim should be subject to the mental health exception for equitable tolling, and that she proved all of the elements of her tortious interference claim.

Following full briefing, the district court reviewed the matter on its chambers calendar without a hearing and ultimately entered an order dismissing Breslaw's complaint with prejudice based on the facts as alleged in Breslaw's pleadings and the attached exhibits. In doing so, the court found that the two-year statute of limitations for Breslaw's IIED claim against UNLV had started to run in October of 2019 at the latest, when Breslaw made a Reddit post seeking advice as to whether she had an "emotional distress case for how [UNLV] handled the situation." Accordingly, the district court found that the statute of limitations for Breslaw's IIED claim had expired by the time she filed her complaint against UNLV in June 2023.

Turning to Breslaw's arguments for equitable tolling, the district court analyzed the two factors under *Fausto v. Sanchez-Flores*, 137 Nev. 113, 482 P.3d 677 (2021), and found that Breslaw was neither diligent in filing her complaint nor subject to extraordinary circumstances that prevented her from timely filing the complaint. In doing so, the court specifically found—among other things—that Breslaw was not diligent in pursuing action against UNLV because she had demonstrated an understanding of her claims and the ability to prosecute them by timely filing complaints against other individuals related to the same facts underlying this action. Moreover, the court noted that, despite Breslaw's claims that she was incapacitated by her obsession with Dr. Gallo, this did not stop her from seeking administrative remedies against her with UNLV or seeking legal advice regarding potential claims against the university on the internet. Turning to Breslaw's request to adopt a mental health exception for equitable tolling, the district court found that Breslaw's

“mental condition was not so severe that she did not understand the need to timely file or prepare a Complaint. Her condition did not make it impossible, considering the totality of the circumstances, to meet the filing deadline.” As a result, the court found that her infatuation with Dr. Gallo did not rise to the level of an extraordinary circumstance sufficient to warrant equitable tolling.

As to Breslaw’s tortious interference with potential economic advantage claim, the court found that in order to successfully survive UNLV’s NRCP 12(b)(5) motion, Breslaw must allege facts that meet the five elements of the tort articulated in *In re Amerco Derivative Litig.*, 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).

Considering these elements, the court first found that the claim failed because Breslaw did not properly allege a prospective contractual relationship with a third party. Second, the court found that UNLV’s alleged conduct in the complaint did not rise to the level of “intent to harm” required to meet the standard under this tort. Third, the district court found that UNLV’s actions were privileged and justified as Dr. Gallo had no legal obligation to write Breslaw a letter of recommendation. And fourth, the court found that a higher education application does not create a legally protected property right or prospective economic advantage.¹ Breslaw now appeals.

¹We note that the district court did not expressly address the second factor regarding the defendant’s knowledge of the prospective relationship in its order. *See id.* Nevertheless, given its findings that Breslaw failed to prove the other four factors, including finding that there was no third-party contract in the first place, we conclude that it was unnecessary to do so.

This court reviews a district court's order granting a motion to dismiss for failure to state a claim de novo. *Montanez v. Sparks Family Hosp., Inc.*, 137 Nev. 742, 743, 499 P.3d 1189, 1191 (2021). “[A] court can dismiss a complaint under NRCP 12(b)(5) if the action is barred by the statute of limitations.” *Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 436 (Ct. App. 2023) (internal quotation marks omitted). A district court may dismiss a complaint for failure to state a claim 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.” *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). When evaluating such a dismissal, “this court will recognize all factual allegations in [the plaintiff's] complaint as true and draw all inferences in [the plaintiff's] favor.” *Id.* However, when a plaintiff's complaint is untimely and the statute of limitations is not tolled, dismissal of the complaint is proper. *See Fausto*, 137 Nev. at 120, 482 P.3d at 683.

Intentional Infliction of Emotional Distress

As an initial matter, Breslaw does not challenge the district court's finding that the statute of limitations for her IIED claim began to run in 2019, and that the statute of limitations expired by the time she had filed her complaint in 2023. *See* NRS 11.190(4)(e) (establishing a two-year statute of limitations for intentional infliction of emotional distress claims); *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 challenges the district court's finding that equitable tolling does not apply to her IIED claim under *Fausto*. Under *Fausto*, “when a plaintiff seeks to equitably toll the limitations

period . . . the plaintiff must demonstrate that he or she acted diligently in pursuing his or her claim and that extraordinary circumstances beyond his or her control caused his or her claim to be filed outside the limitations period.” 137 Nev. at 118, 482 P.3d at 682.

In her informal brief, Breslaw argues the district court misapplied the mental health exception for equitable tolling in *Bills v. Clark*, 628 F.3d 1092 (9th Cir. 2010), and advocates for this court to adopt the standard articulated in *Davis v. Vilsack*, 880 F.Supp. 2d 156, 162 (D.D.C. 2012), a United States District Court for the District of Columbia case, and hold that her obsession with Dr. Gallo constitutes an extraordinary circumstance warranting equitable tolling. She further argues the district court inappropriately weighed her infatuation with Dr. Gallo and failed to consider her anxiety disorder when analyzing whether her mental state constituted an extraordinary circumstance under *Fausto*.

Here, however, Breslaw’s arguments for equitable tolling are self-defeating. Both before the district court and in her informal brief Breslaw argues that she was simultaneously too blinded and impaired by her anxiety and infatuation with Dr. Gallo to do anything related to the case, while simultaneously asserting that her successful filing of multiple complaints (involving the same factual contentions regarding Dr. Gallo) against Reddit users proves her diligence in correcting the wrongs against her in this cause of action. But as noted by the district court, Breslaw’s own assertions demonstrate that she was aware of the potential claims against UNLV and, as indicated by her own Reddit post, was already contemplating an IIED claim against it in October 2019. Accordingly, when assuming the truth of the facts as pled and construing them in the light most favorable to

Breslaw, we cannot conclude that she acted with diligence in pursuing her claims against UNLV. *See Fausto*, 137 Nev. at 118, 482 P.3d at 682; *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. 423, 428, 245 P.3d 535, 538 (2010) (“When the material facts of a case are undisputed, the effects of the application of a legal doctrine to those facts are a question of law that this court reviews de novo”).

We further conclude that the district court appropriately determined that Breslaw’s “state of infatuation” with Dr. Gallo did not qualify as an extraordinary circumstance under *Fausto*. Although the district court chose to apply the Ninth Circuit case *Bills v. Clark* in its order while Breslaw argues for application under the *Davis* case, our appellate courts have not adopted a mental health exception for equitable tolling in Nevada. Accordingly, such authority is only persuasive, not mandatory, and Nevada courts are not bound to follow it. And regardless, we need not determine whether Nevada should adopt such an exception in this case, because Breslaw fails to meet the standards articulated for equitable tolling due to mental impairment under *either* case. *See Davis*, 880 F.Supp 2d at 162 (stating that “a bare assertion of health problems does not rise to the extraordinary level: rather, the plaintiff must show that he was *non compos mentis*—incapable of handling his own affairs or unable to function in society.”); *Bills*, 628 F.3d 1099-1100 (stating that a petitioner seeking equitable tolling due to mental impairment must meet a two part test including that the mental impairment is an extraordinary circumstance, meaning that the “petitioner was unable rationally or factually to personally understand the need to timely file,” and that the petitioner was diligent to the extent of his or her understanding but the mental

impairment made it impossible to meet the filing deadline). Because Breslaw's own filings demonstrate that she was able to timely file actions in other matters and was capable of handling her own affairs, she would not meet the standards for equitable tolling articulated in *Davis* or *Bills*. Accordingly, we conclude that the district court appropriately declined to equitably toll the statute of limitations and affirm the portion of the district court's order dismissing Breslaw's IIED claim with prejudice.

Tortious Interference with Prospective Economic Advantage

We now turn to Breslaw's challenges to the district court's dismissal of her tortious interference with prospective economic advantage claim. A claim for tortious interference with prospective economic advantage requires a plaintiff to demonstrate the following five factors:


- (1) a prospective contractual relationship between the plaintiff and a third party;
- (2) knowledge by the defendant of the prospective relationship;
- (3) intent to harm the plaintiff by preventing the relationship;
- (4) the absence of privilege or justification by the defendant; and
- (5) actual harm to the plaintiff as a result of the defendant's conduct.

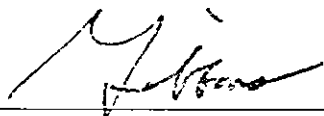
Amerco, 127 Nev. at 226, 252 P.3d at 702.

In her informal brief, Breslaw presents summary challenges to the district court's findings as to each element of the claim. However, having reviewed Breslaw's briefing, we conclude she has not demonstrated a basis for relief with regard to the district court's determination that she could not prove actual harm as a result of UNLV's conduct. In making this determination, the district court found that Breslaw's graduate school application did not create a protectable property interest. And on appeal, Breslaw fails to present any cogent argument challenging this conclusion or

explain how she could show actual harm despite the court's determination in this regard. *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). Under these circumstances, we conclude that the district court did not err in determining that Breslaw failed to demonstrate one of the five elements of her tortious interference with prospective economic advantage claim. *See Amerco*, 127 Nev. at 226, 252 P.3d at 702. Accordingly, we affirm the court's dismissal of this claim with prejudice. *See Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

It is so ORDERED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Lisa Breslaw
University of Nevada, Las Vegas, Office of General Counsel
Eighth District Court Clerk

²Insofar as Breslaw raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.