

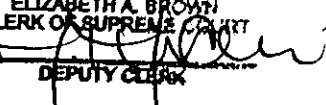
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY WATTS, AN INDIVIDUAL,
Appellant,
vs.
KOS MEDIA LLC, A FOREIGN
CORPORATION,
Respondent.

No. 88107-COA

FILED

MAR 18 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Anthony Watts appeals from a district court order dismissing his complaint under NRCP 12(b)(5). Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

In the underlying matter, Watts sued respondent KOS Media LLC, alleging that it was liable under NRS 41.1347 (Nevada's anti-doxing statute) for posting and/or facilitating the posting of an article that allegedly contained Watts' personal identifying information on its website "The Daily KOS." The post, entitled: "Heartland Fundraising for Tony Watts' \$2,000 Thermometers to Compete with Global Temp Network," was made by a user named "ClimateDenierRoundup" and contained links to the Zillow listing for Watts' Nevada residence, as well as its location on Google Maps. Watts alleged that, due to his status as a well-known climate pundit, the release of his address on the internet increased his risk of death or bodily injury by climate activists, allowing him to recover damages and reasonable attorney fees and costs. Watts later filed a first amended complaint, which included

alternative allegations that KOS either posted the article itself through an employee, or “aided and abetted” a third party in creating the article and knew that it contained personal and potentially harmful information prior to posting. Shortly thereafter, KOS moved to dismiss the first amended complaint in lieu of filing an answer.

In its motion to dismiss, KOS argued that it was entitled to statutory immunity under NRS 41.1347(6), which provides that “[t]his section must not be construed to impose liability on any interactive computer service for any content provided by another person.”¹ Using federal caselaw, KOS argued that it qualified as an interactive computer service under the statute, and that, because the post was made by an anonymous user, the court should determine that it is entitled to statutory immunity as a matter of law. KOS also simultaneously moved the district court to take judicial notice of the article (which was referenced by link in the first amended complaint), drawing the district court’s attention to the disclaimer located under “ClimateDenierRoundup’s” username, which stated that “[t]his content is not subject to review by Daily KOS staff prior to publication.”

¹“Interactive computer service” is defined in NRS 41.1347 by incorporating the definition contained in the federal Communications Decency Act, 47 U.S.C § 230, which is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” 47 U.S.C. §230(f)(2).

Watts opposed the motion to dismiss, arguing—among other things—that KOS does not fall within the statutory exception when considering the allegations in his complaint as true. Specifically, Watts first argued that he never alleged that KOS was an interactive computer service, and second, that his complaint contained alternative allegations that KOS knew the identity of the anonymous poster and “aided and abetted” them in posting the personal information, or that an unknown employee of KOS posted the content.

Following a hearing, the district court entered an order granting KOS’s motion to dismiss with prejudice. In its order, the district court first determined that KOS qualified as an interactive computer service under NRS 41.1347(6).

Next, the district court considered whether the article, or the “content” was created by another person for the purposes of NRS 41.1347(6). In this respect, the court granted KOS’s motion for judicial notice and considered the article as part of its review of the complaint. *See Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 436 (Ct. App. 2023) (stating that a district court’s consideration of matters incorporated by reference into the complaint or integral to the claim will not convert a motion to dismiss into a motion for summary judgment). The court found that Watts recognized in his complaint that the posting itself was anonymous and used the pseudonym “ClimateDenierRoundup” to maintain anonymity and therefore concluded that the article in question was “provided by another person” under the statute. The court next analyzed the plain language of the statute, and using the traditional maxim of

statutory interpretation, “the expression of one thing is the exclusion of another” concluded that Watts’ “allegations of [KOS] aiding, abetting, ratifying, posting, reviewing, or controlling the content created by a third party” contained in the complaint failed as a matter of law, because the Legislature did not create this cause of action. Finally, because the court concluded that KOS met both prongs of the immunity analysis, it found that KOS was immune from liability under NRS 41.1347(6) and dismissed Watts’ complaint with prejudice. Watts now appeals.

On appeal, Watts argues, among other things, that the district court erred when it concluded that KOS was entitled to statutory immunity under NRS 41.1347 as a matter of law. Specifically, Watts argues the district court failed to accept all allegations in his complaint as true, including his alternative allegations that “an individual associated with or employed by KOS Media LLC, and not a third party, posted the content and/or reviewed it prior to posting.” Notably, neither the district court nor KOS expressly addressed this allegation from Watts’ complaint, either on appeal or below. Instead, KOS argues that the inclusion of the post attributing the article to “ClimateDenierRoundup”—which also included the disclaimer that “[t]his content is not subject to review by Daily KOS staff prior to publication”—was sufficient to allow the district court to infer that KOS media did not author or contribute to the posting.

This court rigorously reviews a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff’s factual allegations as true and drawing every reasonable inference in the plaintiff’s favor to determine whether the allegations are sufficient to state a claim for


relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed 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.” *Id.* at 228, 181 P.3d at 672.

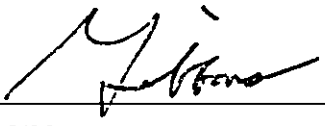
Here, the district court concluded that dismissal was appropriate as it determined that the article at issue was posted by a third party, and that Watts’ aiding and abetting theories failed as a matter of law. But these conclusions ignore several alternative allegations in Watts’ complaint that, when taken as true, may entitle him to relief. *See* NRCP 8(d)(2) (“A party may set out two or more statements of a claim . . . alternatively or hypothetically, either in a single count . . . or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.”). While Watts did include allegations in his complaint that indicated KOS aided and abetted a third party in posting the article; he also included an alternative theory, namely that “an individual associated with or employed by KOS Media LLC, and not a third party posted the content” alongside several other references noting that KOS “created” or “supplied” the content that disseminated his personal identifying information. Further, Watts’ complaint also includes allegations that the disclaimer on the KOS website is incorrect, and that “KOS staff has reviewed the subject posting prior to publication and/or after, calling the disclaimer into question.”

Because this alternative theory of liability posits that KOS itself, not a third party, disseminated Watts’ personal identifying

information, we conclude the district court erred when it determined that KOS is entitled to statutory immunity under NRS 41.1347(6) at this stage of the process. When treating this allegation as true, KOS fails to demonstrate that the content at issue here was “provided by another person” as required for immunity under the statute. *See* NRS 41.1347(6); *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. Accordingly, we reverse the order of the district court granting KOS’s motion to dismiss and remand this matter for further proceedings consistent with this order.²

It is so ORDERED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

²Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that we need not address them in light of our resolution of this case.

cc: Hon. Scott N. Freeman, District Judge
Jeffrey A. Dickerson
Parsons Behle & Latimer/Reno
Jake Tanner Ward
Washoe District Court Clerk