

IN THE COURT OF APPEALS OF THE STATE OF NEVADA


LISA BRESLAW,
Appellant,
vs.

STATE OF NEVADA EX. REL. BOARD
OF REGENTS OF THE NEVADA
SYSTEM OF HIGHER EDUCATION ON
BEHALF OF THE COLLEGE OF
SOUTHERN NEVADA; AND DR.
SONDRA COSGROVE,
Respondents.

No. 89239-COA

FILED

JUN 17 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 under NRCP 12(b)(5). Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Breslaw attended community college at the College of Southern Nevada (CSN) from 2012-2014 and took classes with respondent Dr. Sondra Cosgrove. Subsequently, she continued her education at the University of Nevada, Las Vegas (UNLV) and graduated with a bachelors' degree in 2018. Due to events explained in Breslaw's previous appeals before this court, *see Breslaw v. Cooper*, Docket No. 84072-COA, 2022 WL 4153329, (Nev. Ct. App., Sep. 12, 2022) (Order of Affirmance); *Breslaw v. Board of Regents (UNLV)*, Docket No. 88818-COA, 2025 WL 560101 (Nev. Ct. App. Feb. 19, 2025) (Order of Affirmance), UNLV sent Breslaw a cease and desist letter that prohibited her from contacting any of its professors.

Because Breslaw was interested in applying to graduate school and could not contact any of her professors at UNLV, Breslaw contacted Dr. Cosgrove at CSN to ask if she would be willing to provide a letter of

recommendation. Dr. Cosgrove agreed, indicating that she would provide a supportive letter of recommendation for Breslaw's application(s) to graduate school. Breslaw then applied to the graduate history programs at UNLV and the University of Nevada Reno (Nevada) using Dr. Cosgrove's letter and was subsequently rejected. Afterward, Breslaw filed a "complaint against UNLV for disability discrimination" as a result of her rejection from the graduate program and received a redacted copy of Dr. Cosgrove's letter during the investigation, along with redacted copies of other letters from accepted applicants' applications.

Shortly after receiving the copy of Dr. Cosgrove's letter, Breslaw filed a complaint against respondents, the State of Nevada Board of Regents of the Nevada System of Higher Education on behalf of CSN and Dr. Cosgrove, alleging claims of fraudulent misrepresentation, tortious interference with prospective economic advantage, intentional infliction of emotional distress, and defamation per quod against them. At the center of these allegations, Breslaw asserted Dr. Cosgrove made false representations to her that she would provide Breslaw with a supportive letter of recommendation but deliberately sabotaged her instead by submitting a "weak" and "unsupportive" letter of recommendation to the admissions board, and that she damaged her reputation by publishing defamatory statements about her to the admissions committee.

Breslaw attached the redacted copy of the letter that she received from UNLV to her complaint. On its face, the letter contains no negative statements about Breslaw or her academic history. Indeed, Dr. Cosgrove expressly stated that she wrote the letter "to recommend Lisa Breslaw for the UNLV History M.A. program." In support of that statement, Dr. Cosgrove wrote that "[Breslaw] stands out and rises to the

top with her research acumen and through her interpersonal engagement,” summarized Breslaw’s accomplishments in her community college courses from eight years prior and noted that “[t]hese traits make her well-suited for graduate work that focuses on multiple iterations of research, dialog, and essays, which are increasingly refined.” Finally, Dr. Cosgrove opined that

I have no doubts whatsoever that Lisa will excel in your program. Lisa measures even with the best in her field and her willingness to tackle new challenges with grace and determination will impress you immediately. She possesses the centered fortitude to sustain her from mid-semester onslaughts to moments of quiet reflection.

Despite the contents of the attached letter, Breslaw’s complaint asserted that the portion of the letter stating her “clear prose and succinct argument consistently pushed her assignments to the top of the curve in both courses” she took with Dr. Cosgrove was “weak” when compared to other letters of recommendation as “[g]rad school programs look for much more than that in a student.” Breslaw also asserted that the statement “Lisa understands that a history degree opens the door to many different career fields” and that “with a UNLV history degree, Lisa intends to expand her employment opportunities and advance through the academic ranks” was defamatory as it implied that Breslaw did not intend to remain in the program for a Ph.D., although she expressly told Dr. Cosgrove that was her intent when asking her to write the letter.

Because of these purportedly disparaging remarks—and because Dr. Cosgrove had allegedly fraudulently induced her into believing the letter would be supportive—Breslaw averred that, if she had known the contents of Dr. Cosgrove’s letter in advance, she would not have relied upon

it for her graduate school applications. Breslaw further contended that her correspondence with Dr. Cosgrove meant that Dr. Cosgrove was in a unique position to understand her emotional state and the damage this kind of action would cause. Specifically, Breslaw alleged that she was humiliated because the graduate admissions committees from both UNLV and Nevada reviewed Dr. Cosgrove's letter.

Respondents later moved to dismiss Breslaw's complaint under NRCP 12(b)(5), arguing that (1) Breslaw's claims fail as she is unable to establish any of the elements of her causes of action; (2) the defamation claims were barred by absolute and qualified privilege; (3) CSN, as a state entity, is entitled to qualified immunity on the defamation claims to the extent that they sound in negligence; and (4) that all of Breslaw's claims are barred by the statute of limitations. Breslaw opposed and also moved to amend her complaint. Following full briefing on both motions and a hearing, the district court granted the motion to dismiss on all of the grounds presented by respondents and denied Breslaw's motion to amend her complaint. Breslaw now appeals.

This court reviews a district court's order granting a motion to dismiss for failure to state a claim *de novo*. *Montanez v. Sparks Fam. Hosp., Inc.*, 137 Nev. 742, 743, 499 P.3d 1189, 1191 (2021). We will not affirm a district court's dismissal of a complaint for failure to state a claim "unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief." *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873-74, 8 P.3d 837, 839 (2000) (citations omitted). 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," *Buzz Stew, LLC v. City of N.*

Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008), “but the allegations must be legally sufficient to constitute the elements of the claim[s] asserted,” *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). Further, although consideration of documents outside of the complaint ordinarily converts an NRCP 12(b)(5) motion into a motion for summary judgment, “a court may properly consider ‘matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling’ on such a motion.” *Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 436 (Ct. App. 2023) (citing *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993)).

On appeal, Breslaw challenges each of the district court’s alternative findings regarding the dismissal of her complaint, including its determinations regarding privilege, waiver, the statute of limitations, and its conclusions that each of Breslaw’s individual claims fail as a matter of law as she cannot allege sufficient facts to maintain them. As we agree with the district court’s determination that Breslaw’s allegations do not support her four named causes of action against respondents, we affirm on that basis for the reasons discussed below, and do not address Breslaw’s remaining arguments.

Fraudulent Misrepresentation

In her informal brief, Breslaw argues that her complaint was sufficient to state a claim for fraudulent misrepresentation. Specifically, she argues that her complaint contained statements demonstrating that Dr. Cosgrove provided a false misrepresentation—i.e. that her letter of recommendation would be supportive—and also demonstrated that the

letter itself was not supportive when compared to academic admissions standards.

To succeed on a fraudulent misrepresentation cause of action, the plaintiff must prove that:

(1) [a] false representation [has been] made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation.

Barmettler v. Reno Air, Inc., 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998).

Having reviewed Breslaw's complaint and the documents attached thereto, we agree with the district court's determination that "based upon the plain language of the Letter, Dr. Cosgrove did not fraudulently represent to Plaintiff that she would write a supportive letter of recommendation and then intentionally not do so." While Breslaw's complaint alternatively described the letter as "weak" and "unsupportive" when compared to the letters written by other professors for other prospective students, this court is not persuaded that these allegations of fact demonstrated that Dr. Cosgrove falsely represented that she would write a supportive letter of recommendation and failed to do so—especially when, on its face, the letter attached to the complaint unmistakably supported Breslaw's admission to the UNLV and Nevada graduate history programs.¹ See *Support*, Merriam-Webster Online Dictionary (2025)

¹While Breslaw's complaint asserts Dr. Cosgrove's letter resulted in her being rejected by graduate programs at both UNLV and Nevada, she only attached a copy of the letter Dr. Cosgrove submitted to UNLV to her

(recognizing “supportive” as an adjective of the verb “support” and defining “support” as meaning “to promote the interests or cause of”). Under these circumstances, we conclude that the district court did not err when it dismissed Breslaw’s claim for fraudulent misrepresentation, as the allegations in Breslaw’s complaint, when taken as true, do not establish that Dr. Cosgrove made a false representation to her. *See Barmettler*, 114 Nev. at 446-47, 956 P.2d at 1386 (explaining that plaintiff has the burden of proving every element of a fraudulent misrepresentation claim).

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.

In re Amerco Derivative Litig., 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).

In its order, the district court found, among other things, that Breslaw failed to demonstrate that she had a prospective contractual relationship with UNLV and/or Nevada. Breslaw did not challenge this finding in her informal brief, and in both her initial and amended reply, she failed to present cogent argument regarding the same. Thus, we need not

complaint. Nonetheless, her complaint indicates that Dr. Cosgrove submitted an identical letter to Nevada.

consider these arguments. See *Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in an appellant's reply brief was waived); *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). We therefore conclude that the district court did not err when it dismissed Breslaw's tortious interference with prospective economic advantage claim.

Intentional Infliction of Emotional Distress

Next, Breslaw argues that she sufficiently pleaded her cause of action for intentional infliction of emotional distress. In doing so, she argues that Dr. Cosgrove's conduct was extreme and outrageous as she was aware that "her role over me in history courses would give her letter significant weight in my application, and she knew I was susceptible to emotional injury because of the defamation and harassment I experienced online."

The tort of intentional infliction of emotional distress has four elements: "(1) extreme and outrageous conduct on the part of the defendant; (2) intent to cause emotional distress or reckless disregard for causing emotional distress; (3) that the plaintiff actually suffered extreme or severe emotional distress; and (4) causation." *Blige v. Terry*, 139 Nev., Adv. Op. 60, 540 P.3d 421, 432 (2023). Our supreme court has held that "extreme and outrageous conduct" is that which exceeds the bounds of decency, see *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998), and the Ninth Circuit has observed that "[l]iability for emotional distress will not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities,'" *Candelore v. Clark Cnty. Sanitation Dist.*,

975 F.2d 588, 591 (9th Cir. 1992) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)).

In her complaint, Breslaw contended that “Dr. Cosgrove’s behavior—writing Plaintiff a weak letter that would guarantee her rejection from the programs she applied to—was extreme and outrageous, especially given that she gave Plaintiff the impression . . . that the letter would be supportive.” Breslaw further complained that the letter “contained no enthusiasm,” and that “when there was praise, it was exaggerated and not supported by example.”

We conclude these alleged facts are insufficient to demonstrate that Dr. Cosgrove’s actions were extreme and outrageous. Taking Breslaw’s allegation that Dr. Cosgrove’s letter was “weak” as true, as we must, the mere submission of a “weak” or otherwise mediocre letter of recommendation on one’s behalf cannot be said to “exceed the bounds of decency” as required for conduct to be considered so extreme and outrageous to support an intentional infliction of distress claim. *See Maduikie*, 114 Nev. at 4, 953 P.2d at 26. At best, the submission of such a letter would be akin to a simple indignity or annoyance that courts have recognized is insufficient to support a claim for intentional infliction of emotional distress. *See Candelore*, 975 F.2d at 591. We therefore conclude that Breslaw failed to sufficiently plead her claim for intentional infliction of emotional distress as the complaint failed to allege sufficient facts to support all of the elements of such a claim. *See Sanchez*, 125 Nev. at 823, 221 P.3d at 1280 (requiring allegations in a complaint to be legally sufficient to constitute the claims asserted). Thus, the district court did not err in dismissing this claim.

Defamation per quod

As to her defamation per quod claim, Breslaw argues that the district court failed to consider that the letter was addressed to and read by a graduate school admissions committee, which rendered the statements that “[Breslaw] understands that a history degree opens the door to many different career fields” and that she intends to use the history MA to “expand her employment opportunities” defamatory. Breslaw also argues that, to the extent the district court considered the letter a statement of opinion, the statements were still defamatory as they implied facts that would render the message defamatory if false.

To state a cause of action for defamation, a plaintiff must show “(1) a false and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.” *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993). A defamation per quod claim recognizes that words can be defamatory “when the defamation does not appear from the words themselves, but arises from extrinsic circumstances, when viewed with the statement, conveys a defamatory meaning.” *Ornatek v. Nev. State Bank*, 93 Nev. 17, 20, 558 P.2d 1145, 1147 (1977) (citation omitted). In other words, to demonstrate defamation per quod, “[t]he plaintiff must identify a plausible defamatory meaning of the challenged statement, and allege specific facts establishing that the words were interpreted as being defamatory.” 53 C.J.S. *Libel and Slander* § 196.

Whether a statement is defamatory is generally a question of law. *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993). A statement is considered “defamatory if it would tend to lower the subject in the estimation of the community, excite derogatory opinions about the

subject, and hold the subject up to contempt.” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002) (internal quotation marks omitted).

In her complaint, Breslaw asserted that the statement “[Breslaw] understands that a history degree opens the door to many different career fields, consequently, with a UNLV history degree, Lisa intends to expand her employment opportunities” was defamatory. Seeming to recognize that none of the language in the letter of recommendation rose to the level of defamation per se, Breslaw alleged that extrinsic circumstances, such as her prior negative experiences with UNLV, and the fact that the letter was reviewed by graduate admissions officers at Nevada and UNLV rendered the language defamatory in context. This is so, Breslaw argued, because the graduate level programs she applied to were for “students who intend to continue their studies at the [Ph.D.] level and pursue an academic career,” and the letter portrayed her as a weak and mediocre student who had no interest in doing so when compared with the letters submitted on behalf of other applicants which were “genuinely supportive and enthusiastic.”

But even when examining this statement through the lens of Breslaw’s extrinsic circumstances—i.e., that the letter was reviewed by graduate admissions officers with a discerning eye and compared to other applicants—the statement identified by Breslaw does not convey a defamatory meaning. *See Pegasus*, 118 Nev. at 715, 57 P.3d at 88. First, we note that, when reviewing the letter in its totality, the purportedly defamatory sentence *does* expressly mention Breslaw’s desire to pursue further academic career opportunities stating, in pertinent part that: “Lisa intends to expand her employment opportunities and to advance through


the academic ranks.” *See Chowdhry*, 109 Nev. at 484, 851 P.2d at 463 (stating that when reviewing an allegedly defamatory statement, “[t]he words must be reviewed in their entirety and in context to determine whether they are susceptible of a defamatory meaning”). Thus, the letter itself contradicts Breslaw’s assertion that the statement regarding “expanding employment opportunities” was “another way of saying [she] would never succeed in graduate school or in history” or that she did not “understand the nature of the program or the work entailed.”


Moreover, the remainder of the letter, as recounted above, is overwhelmingly positive in its review of Breslaw’s academic capabilities—even if Dr. Cosgrove was necessarily constrained to only comment on what she had personally observed during Breslaw’s community college career eight years prior. Breslaw’s contention that these positive words take on a defamatory context because, in her opinion, other letters of recommendation were more “enthusiastic” and better written, does not demonstrate that Dr. Cosgrove’s letter lowered the opinion of Breslaw “in the estimation of the community, excite[d] derogatory opinions about [her], [or held her] up to contempt.” *See Pegasus*, 118 Nev. at 715, 57 P.3d at 88. Thus, the allegations regarding Dr. Cosgrove’s letter in Breslaw’s complaint did not establish a defamatory meaning arising from extrinsic circumstances, but instead conveyed Breslaw’s disappointment towards the quality of the letter provided. *See Ornatek*, 93 Nev. at 20, 558 P.2d at 1147. Because Breslaw failed to demonstrate that the statements contained in the letter of recommendation were defamatory, we conclude that the district court did not err in dismissing her defamation per quod claim.

Based on the reasoning set forth above, we conclude that the district court did not err in dismissing Breslaw's complaint. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Lisa Breslaw
College of Southern Nevada - Office of General Counsel
Eighth District Court Clerk

²To the extent Breslaw asserts that the district court abused its discretion when it denied her motion to amend her complaint, this argument is without merit as the amendment would have been futile based on the language included in her proposed amended complaint. *See Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Ct. App. 2015) ("Under NRCP 15(a), leave to amend, even if timely sought, need not be granted if the proposed amendment would be 'futile.'").

Insofar as the parties raise 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.