

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTHER KHOE CHOW,
Appellant,

vs.

EDNA MARIE NEUNER; REX C.
NEUNER; BILLY J. WEST; WILLEM H.
KHOE, II; JUDITH ANN KHOE'S
ESTATE; KHOE FAMILY TRUST; M.
MARIAN MILLER ALZHEIMER
CENTER; KIM HILTON; CURLY
LOUNSBURY; JOHN HILTON; RALPH
RHEA; JAMES M. O'REILLY; SHERRIE
L. CARRICO; CINDY J. LIPPERT AND
LISA MICHEL CAMPBELL,
Respondents.

No. 38463

FILED

OCT 14 2002

MANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order dismissing appellant's complaint. In reviewing an order granting a motion to dismiss, this court's task is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.¹ In addition, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true.²

Having reviewed the record in this matter, we conclude that the complaint failed to allege any facts stating a claim upon which relief can be granted under NRCP 12(b)(5). First, appellant failed to state a

¹See Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

²See Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993).

claim for wrongful death, premised upon gross negligence. A wrongful death action may be maintained by the heirs or personal representatives of the decedent.³ But here, appellant was neither an heir nor a personal representative of the decedent.⁴ Further, an action for alienation of affection is no longer recognized in Nevada.⁵

As for appellant's allegations of libel and slander concerning statements made in the related guardianship proceeding, these statements were privileged.⁶ Further, appellant's related claim for abuse of process concerning the guardianship proceeding failed to set forth sufficient allegations to make out the elements of a right to relief.⁷ Finally, we conclude that any further allegations in the complaint failed to state any claim upon which relief can be granted, and were properly

³See NRS 41.085.

⁴See NRS 41.085(1) (defining "heir" as a person entitled to succeed to the decedent's separate property if he had died intestate); see also NRS 134.090 (stating that if the decedent leaves no surviving spouse, the estate goes to the decedent's children).

⁵NRS 41.370; NRS 41.380.


⁶See Duff v. Lewis, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998) (stating that "absolute immunity extends to all persons who are an integral part of the judicial process"); Knox v. Dick, 99 Nev. 514, 517, 665 P.2d 267, 270 (1983) (providing that statements made by a witness in the course of judicial proceedings are absolutely privileged).

⁷See Posadas v. City of Reno, 109 Nev. 448, 457, 851 P.2d 438, 444-45 (1993) (quoting Kovacs v. Acosta, 106 Nev. 57, 59, 787 P.2d 368, 369 (1990)) (stating the elements for an abuse of process claim as "(1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding.").


dismissed under NRCP 12(b)(5), including appellant's cause of action against the killer of a decedent under NRS chapter 41B.⁸

According, as we conclude that the district court properly dismissed appellant's complaint, we

ORDER the judgment of the district court AFFIRMED.⁹

 J.
Shearing

 J.
Leavitt

 J.
Becker

⁸See NRS 41B.260(1) (allowing an interested person to bring a civil action alleging that a person was a culpable actor in the felonious and intentional killing of a decedent); NRS 41B.300 (stating that a killer of a decedent forfeits any interest in the decedent's estate).

We further conclude that the district court did not err in denying appellant's motion to join three of the decedent's children as additional plaintiffs. At the time appellant sought joinder, the claims pertaining to the proposed parties had already been dismissed with prejudice.

⁹Although appellant was not granted permission to file documents in this matter in proper person, see NRAP 46(b), we have considered the documents received from appellant. In the opening brief, appellant contends that the district court improperly required her to submit a cost bond under NRS 18.130 for Billy J. West, who resided outside of Nevada. This contention is without merit. The district court required appellant to submit only two cost bonds for all of the defendants in Group 1, at least two of whom resided in Nevada.

cc: Hon. Allan R. Earl, District Judge
Roland S. Ericsson
Pico & Mitchell
Esther Khoe Chow
John Hilton
Willem H. Khoe II
Ralph Rhea
Clark County Clerk