IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEPHEN A. FUZFA, JR.,
Appellant,
vs.
NORTHTOWNE INSURANCE AGENCY, LLC, A DIVISION OF DHIS CO., INC.,
Respondent.

No. 89708-COA

ORDER OF AFFIRMANCE

Stephen A. Fuzfa, Jr., appeals from a district court order of dismissal in an employment contract action. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

In June 2024, Fuzfa filed a complaint against respondent Northtowne Insurance Agency, LLC, for breach of contract and breach of the covenant of good faith and fair dealing. Fuzfa alleged that Northtowne recruited him and the parties signed a contract whereby Fuzfa would be paid $8,000 per month. Fuzfa further alleged that he began working for Northtowne in February 2023, but in June 2023 Northtowne unilaterally reduced his pay. Northtowne thereafter filed a motion to dismiss, arguing primarily that because Fuzfa was an at-will employee, it could prospectively modify the terms of his employment and Fuzfa's decision to continue working at Northtowne after receiving notification of that modification constituted acceptance and sufficient consideration for that modification. Fuzfa opposed the motion, and Northtowne filed a reply. Ultimately, the district court granted the motion to dismiss. This appeal followed.

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On appeal, Fuzfa challenges the district court's dismissal of his complaint. Fuzfa argues that the parties reached an agreement as his monthly compensation and public policy favors enforcement of that agreement.

A defendant's motion to dismiss under NRCP 12(b)(5) is "subject to a rigorous standard of review on appeal." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008) (internal quotation marks omitted). In reviewing dismissal under NRCP 12(b)(5), we recognize all factual allegations in the complaint as true and draw all inferences in the plaintiff's favor. *Id.* at 228, 181 P.3d at 672. A complaint should be dismissed only if it appears beyond a reasonable doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. *Id.* An order granting an NRCP 12(b)(5) motion to dismiss and the district court's legal conclusions are reviewed de novo. *Id.* at 228, 181 P.3d at 672.

Employment "at-will" is a contractual relationship and thus governed by contract law. *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 369 (1989). In Nevada, employers have the right to discharge an at-will employee for any reason, so long as the reason does not violate public policy. *See Martin v. Sears, Roebuck & Co.*, 111 Nev. 923, 926-27, 899 P.2d 551, 553-54 (1995). The supreme court has also "established that employers may unilaterally modify the terms of an at-will employment arrangement in prospective fashion," and that "the employee's continued employment constitutes sufficient consideration for the modification." *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 966, 194 P.3d 96, 105 (2008). In so providing, the supreme court has "recognized that at-will employees have no contractual rights arising from the employment relationship that limit

the employer's ability to prospectively . . . change the terms of employment." *Id.* at 966 n.41, 194 P.3d at 106 n.41 (citing, with approval, an opinion from the United States Court of Appeals for the Ninth Circuit explaining that, "'[a]n employer privileged to terminate an employee at any time necessarily enjoys the lesser privilege of imposing prospective changes in the conditions of employment'" (quoting *Cotter v. Desert Palace, Inc.*, 880 F.2d 1142, 1145 (9th Cir.1989))). As such, a claim arising from breach of contract has no application to at-will employment. *Martin*, 111 Nev. at 928, 899 P.2d at 554.

In this case, Fuzfa acknowledges he was an at-will employee but argues that the parties had a separate written agreement with regard to his compensation whereby Northtowne contracted away its traditional right to unilaterally modify an at-will employment term and, therefore, the at-will doctrine does not preclude his contract claims. However, Fuzfa cites no relevant authority to support his position. *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 lack citation to relevant authority). And, contrary to his assertion that Northtowne's offer letter constituted a contract which exempted him from the at-will doctrine with respect to his compensation and that public policy favors his assertion that the reduction in his salary constituted an actionable claim of breach of contract, Nevada caselaw is clear that at-will employees cannot bring breach of contract claims under the circumstances at issue in this matter. *See Sands Regent v. Valgardson*, 105 Nev. 436, 439, 777 P.2d 898, 899 (1989) (explaining that at-will employees had no basis to assert a claim for breach of contract because that cause of action "presuppose[s] that the parties had an employment agreement").

For Fuzfa's breach of contract claim to lie, he would have had to show that there was a contract that demonstrated he was not an at-will employee, which he cannot do as he has conceded his status as an at-will employee. *See, e.g., Bally's Grand Employees' Fed. Credit Union v. Wallen*, 105 Nev. 553, 555, 779 P.2d 956, 957 (1989) (explaining that a terminated employee could recover on contract claims only if she established that she was employed either under an express or implied contract that she could be terminated only for just cause). Because Fuzfa was an at-will employee, Northtowne was free to modify the terms of that arrangement prospectively. *See Baldonado*, 124 Nev. at 966, 194 P.3d at 105.

Based on the record before this court, Northtowne did just that when it implemented prospective changes to Fuzfa's compensation. Northtowne paid Fuzfa in accordance with the offer letter until mid-2023, when it notified him that due to a decline in business, it would reduce his pay beginning in June 2023. And, even taking Fuzfa's allegation as true that he did not initially consent to the reduction in his pay, his continued work for Northtowne after the modification nevertheless constituted an agreement to the new compensation terms. *See id.* (providing that an "employee's continued employment constitutes sufficient consideration for the modification"). Accordingly, we conclude that the district court properly dismissed Fuzfa's complaint with regard to his claim for breach of contract.[1] *See Buzz Stew, LLC*, 124 Nev. at 227-28, 181 P.3d at 672.

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[1]Fuzfa also challenges the applicability of NRS 608.100, which sets forth when it is unlawful for an employer to decrease an employee's compensation. However, he failed to acknowledge this statute below, even after Northtowne raised it in its motion to dismiss, so he has forfeited this argument on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623

We are similarly unpersuaded by Fuzfa's contention that the dismissal of his complaint interferes with his right to contract in violation of the Contracts Clause of the Nevada Constitution. The Contracts Clause prohibits a state from passing a law that impairs obligations of existing contracts. *Nat'l Ass'n of Mut. Ins. Cos. v. Dep't of Bus. & Indus., Div. of Ins.*, 139 Nev. 18, 34, 524 P.3d 470, 485 (2023) ("Under the United States and Nevada Constitutions, the state may not pass a law that impairs the obligations of existing contracts."). Fuzfa does not argue that a state law impairs an existing contractual relationship, and he thus fails to demonstrate his Contracts Clause challenge has merit. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978) (holding that the first step of a Contracts Clause challenge is to determine whether the

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P.2d 981, 983 (1981) (declining to consider arguments that were not raised before the district court).

Moreover, to the extent he argues that disputes of fact preclude dismissal, that is not the appropriate standard at this stage, and, in any event, we construe all factual allegations in the complaint as true. *See Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672 (explaining that, when reviewing a dismissal under NRCP 12(b)(5), we recognize all factual allegations in the complaint as true and draw all inferences in the plaintiff's favor). In addition, we are not persuaded by Fuzfa's contention that we must take as true that his rate of compensation was "guaranteed" and could not be modified, as that is a legal conclusion. *See Nev. Yellow Cab Corp. v. State*, No. 83014, 2022 WL 17367603, *2 (Nev. Dec. 1, 2022) (Order of Affirmance) (explaining that allegations that are legal conclusions need not be accepted as true for purposes of NRCP 12(b)(5)).

Additionally, Fuzfa fails to make any specific arguments as to his claim for breach of the implied covenant of good faith and fair dealing or explain why he believes the district court erroneously granted dismissal as to this claim. As such we need not address the district court's dismissal of this claim. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (declining to consider issues that are not supported by cogent argument).

challenged state law "operate[s] as a substantial impairment" to an existing contractual relationship). We, therefore,

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Madelyn Shipman, Settlement Judge
Law Office of Mark Mausert
Simons Hall Johnston PC/Reno
Washoe District Court Clerk

[2]Insofar as Fuzfa 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 or need not be reached given our disposition.