



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. 91631-COA

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; Hon. Carli Lynn Kierny, Judge.

Following this court's order in *Breslaw v. Board of Regents (CSN)*, No. 89239-COA, 2025 WL 1710662 (Nev. Ct. App. June 17, 2025) (Order of Affirmance), respondent Dr. Sondra Cosgrove shared an Our Nevada Judges Facebook post containing this court's order to her private Facebook page.¹ The

¹In that appeal, Breslaw sued respondents for various intentional torts after Dr. Cosgrove (Breslaw's former history professor at the College of Southern Nevada) wrote Breslaw an allegedly defamatory letter of recommendation in support of Breslaw's admission to graduate school. *Id.* at *1-2. At that time, Breslaw had graduated from a bachelor's program at UNLV but could not contact any of her professors for a recommendation. *Id.* at *1. Breslaw generally alleged (among other things) that Dr. Cosgrove's letter of recommendation was defamatory and caused her to be rejected from her

post contained the caption “[t]his is how some students are now.” A third party commented on the post: “[w]ell that’s just crazy. please say it was after graduating UNLV and not CSN. Just curious of the level of entitlement” Dr. Cosgrove responded: “[i]t was after graduating CSN, unfortunately.”

Breslaw then filed the instant action against respondent the State of Nevada Board of Regents of the Nevada System of Higher Education on behalf of the College of Southern Nevada (CSN) and Dr. Cosgrove, alleging claims for libel per se and intentional infliction of emotional distress. In her complaint, Breslaw asserted Dr. Cosgrove’s comment on her Facebook page was libelous per se as “[a]fter being explicitly asked whether Plaintiff had at least graduated from UNLV when she asked for the letter, Dr. Cosgrove stated that the request came after graduating from CSN-conveying that Plaintiff did not have a bachelor’s degree.” Breslaw also alleged that “the wording and tone of the comment conveyed that [she] was unintelligent and incapable of earning a bachelor’s degree.” As to intentional infliction of emotional distress, Breslaw alleged that Dr. Cosgrove’s intentional public defamation was extreme and outrageous conduct, that Dr. Cosgrove was aware she was sensitive to social media harassment due to Dr. Cosgrove’s previous involvement in Breslaw’s earlier lawsuits, and that she felt “embarrassed and angered” by the comment.

Respondents moved to dismiss the complaint on grounds that Breslaw had failed to assert a claim against CSN, and that her claims for libel per se and intentional infliction of emotional distress against Dr. Cosgrove failed as a matter of law as the statements were neither defamatory nor

graduate school programs. *Id.* The district court dismissed Breslaw’s complaint under NRCP 12(b)(5), and this court affirmed. *Id.* at *6.

extreme or outrageous conduct. Breslaw opposed and moved to amend her complaint to add additional facts related to her college essay business, wherein she “assists students with getting into and succeeding in college.”

Breslaw’s proposed amended complaint added additional allegations to her libel per se claim, including that “Dr. Cosgrove’s statement, ‘[i]t was after graduating from CSN, unfortunately,’ conveyed that Breslaw ‘asked Dr. Cosgrove for the graduate school letter of recommendation immediately after graduating from CSN and lacked a bachelor’s degree. As such, it also conveyed that [Breslaw] was unfit for her business.’” As to her intentional infliction of emotional distress claim, Breslaw’s proposed amendments reflected that she felt “ashamed and naïve” and exacerbated initial injuries that were the focus of previous lawsuits.

Following full briefing and a hearing on both motions, the district court entered an order granting respondents’ motion to dismiss and denying Breslaw’s motion to amend. In its order, the district court dismissed all claims against CSN on the basis that there were no allegations, acts, or omissions in the complaint pertaining to CSN. The district court likewise concluded that Breslaw failed to state a claim for libel per se against Dr. Cosgrove, as the comment was “neither false nor defamatory” and did not refer to any alleged profession or business of the plaintiff. Next, the district court found that Breslaw’s interpretation that the comment implied she was “uneducated” was unfounded, and rejected Breslaw’s argued application of *Miller v. Jones*, 114 Nev. 1291, 1296, 970 P.2d 571, 575 (1998). Finally, the court found that Breslaw did not demonstrate any proof of actual damages. Thus, the district court found that Breslaw’s claim for libel per se failed as a matter of law.

Similarly, the district court also found that the conduct at issue in the complaint failed to rise to the level of intentional infliction of emotional distress, and that Breslaw's "alleged embarrassment and anger do not constitute extreme or severe emotional distress." Thus, the district court concluded that Breslaw's intentional infliction of emotional distress claim failed as a matter of law.

Finally, the district court addressed Breslaw's motion to amend and found that Breslaw's proposed amendments would be futile as they would not cure the defects identified in the order granting the motion to dismiss. Breslaw now appeals.

On appeal, Breslaw challenges the district court's order granting respondents' motion to dismiss under NRCP 12(b)(5) and the district court's denial of her motion to amend. 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).

Breslaw first challenges the district court's dismissal of her libel per se claim, arguing that the district court erred when it determined that the Facebook comment was not defamatory, and in the alternative that the court should have allowed a jury to make the determination because the statement's defamatory nature was ambiguous. Respondents argue, among other things, that the district court did not err in dismissing the libel per se claim as the statement does not reflect any defamatory meaning in its plain and commonly understood sense, and is factually true in the sense that the letter was written after Breslaw graduated from CSN.

To state a cause of action for libel, 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 statement is libelous per se and “considered so likely to cause serious injury to reputation and pecuniary loss that these statements are actionable without proof of damages” if it is a false statement concerning “(1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the person's lack of fitness for trade, business, or profession; and (4) imputing serious sexual misconduct.” *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (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 this case, Breslaw's operative complaint did not contain any allegations that would constitute libel per se as recognized in Nevada, as the

statement at issue, “[i]t was after graduating CSN, unfortunately,” cannot be understood in its plain and ordinary meaning to “[impute] the person’s lack of fitness for trade, business, or profession,” *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282, even when considered with the surrounding comments. Unlike a claim for libel per quod, where “[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, libel per se is recognized only “when written or printed words in and of themselves are so obviously hurtful to the person aggrieved by them that proof of injury is not required.” 50 Am. Jur. 2d *Libel and Slander* § 148 (2026); *see also Cohen v. Hansen*, No. 2:12-cv-01401-JCM-PAL, 2015 WL 3609689, at *4 (D. Nev. June 9, 2015) (stating that when considering whether a statement constitutes libel per se, words “are to be taken in their plain and natural import according to the ideas they convey to those to whom they are addressed; reference being had not only to the words themselves but also to the circumstances under which they were used” (quoting *Talbot v. Mack*, 41 Nev. 245, 262, 169 P. 25, 29 (Nev. 1917))).

Here, the statement “[i]t was after graduating CSN, unfortunately,” is not defamatory on its face as it does not “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*, 118 Nev. at 715, 57 P.3d at 88 (internal quotation marks omitted). Nor does it impute Breslaw’s lack of fitness for her business either under the plain meaning of the words or in the context in which they were used, as Breslaw’s business was not mentioned or implied in the original post, comment section, or in the attached court of appeals decision. And because a claim for libel per se requires the

defamatory meaning to be “apparent on the face of the statement,” 50 Am. Jur. 2d *Libel and Slander* § 148, we conclude that the district court did not err when it determined that *Miller*, 114 Nev. 1291, 970 P.2d 571, was distinguishable from this case, or that Breslaw’s allegations that the statement implied she was uneducated were unfounded.

Breslaw also argues that the district court erred when it concluded that she failed to state a claim for libel per se as she did not demonstrate proof of actual damages. However, as stated above, damages are only presumed in defamation actions if libel per se is established. *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282. Otherwise, a plaintiff must demonstrate actual damages as an element of a libel claim. *Chowdhry*, 109 Nev. at 483, 851 P.2d at 462. Here, in the absence of a defamatory statement qualifying as libel per se, the lack of actual damages is fatal to any construction of Breslaw’s cause of action under an alternate libel theory, including libel per quod. Because Breslaw failed to allege sufficient facts to demonstrate that the statement at issue constituted libel per se or that the statement damaged her, we conclude that the district court did not err in dismissing her libel per se 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).

Next, Breslaw challenges the district court’s dismissal of her intentional infliction of emotional distress claim. Breslaw argues, among other things, that the conduct here could be considered extreme and outrageous as Dr. Cosgrove publicly defamed her and “by extension, told the public [she] was unfit for [her] business.” Breslaw argues that Dr. Cosgrove knew she was susceptible to emotional distress via social media comments due to Dr.

Cosgrove's involvement in prior cases, and states that the timing of Dr. Cosgrove's comment shows malicious intent.

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. 607, 618, 540 P.3d 421, 432 (2023). Extreme and outrageous conduct "is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community," *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal quotation marks omitted), and the United States Court of Appeals for 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 alleged that Dr. Cosgrove's actions qualified as intentional infliction of emotional distress. Breslaw alleged that Dr. Cosgrove was aware that she was sensitive to social media harassment and intentionally made a false statement that she asked for a letter of recommendation without a bachelor's degree in order to subject her to public ridicule. Breslaw alleged these actions caused her to feel "both embarrassed and angered by the comment."

We conclude these alleged facts are insufficient to demonstrate that Dr. Cosgrove's actions were extreme and outrageous such that they exceeded "all possible bounds of decency" and are "regarded as utterly

intolerable in a civilized community.” *Maduike*, 114 Nev. at 4, 953 P.2d at 26. Instead, the alleged conduct at issue here is similar to the simple indignities or annoyances that courts have recognized are 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.

Next, Breslaw argues that the district court erred when it dismissed CSN as a party from the complaint as CSN should be held accountable for Dr. Cosgrove’s actions under the theory of vicarious liability. However, as we concluded that the district court correctly dismissed the claims against Dr. Cosgrove, we need not address the issue of vicarious liability against CSN.

Finally, Breslaw challenges the district court’s denial of her motion for leave to amend her complaint. This court reviews the district court’s denial of a motion to amend for an abuse of discretion. *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004). And the district court need not grant leave to amend if the proposed amendment would be futile. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 289, 357 P.3d 966, 973 (Ct. App. 2015).

Here, the district court concluded that Breslaw’s motion to amend was futile as her proposed amendments would not cure the defects in her original complaint. We agree. Although Breslaw’s proposed amended complaint included assertions that she operated a college essay coaching

business, these new facts would not cure the underlying issue that the alleged defamatory statement was neither defamatory nor libelous per se. See *Chowdhry*, 109 Nev. at 483, 851 P.2d at 462; *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282. Similarly, Breslaw's additional allegations that she felt ashamed and naïve due to the statement would not establish that the underlying conduct was extreme and outrageous. See *Blige*, 139 Nev. at 618, 540 P.3d at 432; *Maduiké*, 114 Nev. at 4, 953 P.2d at 26. And finally, none of the proposed amendments included any facts or allegations against CSN, so dismissal of that party remained appropriate. Under these circumstances, the district court did not abuse its discretion in concluding that Breslaw's proposed amended complaint would be futile and denying her motion to amend. See *Nutton*, 131 Nev. at 289, 357 P.3d at 973.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Bulla, C.J.


Gibbons, J.


Westbrook, J.

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.

cc: Hon. Carli Lynn Kierny, District Judge
Naylor & Braster
Lisa Breslaw
Eighth Judicial District Court Clerk