



IN THE SUPREME COURT OF THE STATE OF NEVADA

CALEB LINDSEY, AN INDIVIDUAL,
Appellant,
vs.
JUST CHILLIN, LLC D/B/A KONA ICE
OF CENTENNIAL HILLS, A
DOMESTIC LIMITED-LIABILITY
COMPANY; BARBRA PERGI, AN
INDIVIDUAL; LISA THORNBRUE, AN
INDIVIDUAL; AND KONA ICE, INC. A
KENTUCKY CORPORATION,
Respondents.

No. 91733

ORDER OF AFFIRMANCE

This pro se appeal challenges district court orders granting motions to dismiss a complaint in an employment dispute. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Respondents Barbra Pergi and Lisa Thornbrue operated respondent Just Chillin, LLC (collectively, the Just Chillin parties), a franchisee of respondent Kona Ice, Inc., and employed appellant Caleb Lindsey. Lindsey reported the Just Chillin parties to the Southern Nevada Health District (SNHD). Just Chillin later terminated Lindsey's employment. Lindsey alleged respondents thereafter interfered with Lindsey's unemployment benefits and, as relevant here, sued respondents for retaliation, wrongful termination, and defamation. The Just Chillin parties moved to dismiss under NRCP 12(b)(5) while Kona Ice moved to dismiss for lack of personal jurisdiction. Lindsey sought leave to amend the complaint. The district court dismissed Lindsey's claims against the Just Chillin parties with prejudice, denied Lindsey leave to amend, and dismissed the claims against Kona Ice with prejudice for lack of personal jurisdiction. Lindsey appeals.

We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting 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). Applying this standard, we perceive no error in the district court's dismissal of Lindsey's claims against the Just Chillin parties.

Lindsey challenges the district court's dismissal of the retaliation claim, arguing that the reporting of the alleged unlawful health and safety practices constituted protected activity. We are not persuaded. The district court properly dismissed Lindsey's NRS 613.340 retaliation claim because Lindsey's reports to the SNHD did not constitute protected activity under that statute. NRS 613.340(1) prohibits retaliation for opposing an unlawful employment practice under NRS 613.133 or NRS 613.310 to 613.4383 and for participating in proceedings under those statutes. NRS 613.340(2) separately prohibits employment notices or advertisements indicating discrimination based on certain protected characteristics, unless the characteristic constitutes a bona fide occupational qualification. Here, Lindsey's reports did not oppose an employment practice prohibited by either subsection of NRS 613.340. *See, e.g., Sternquist v. Humble Hearts LLC*, No. 2:19-cv-00448-JAD-BNW, 2021 WL 3134902, at *3 (D. Nev. July 23, 2021) (concluding that reports of HIPAA and Medicaid violations did not constitute protected activity under NRS 613.340 because they did not concern prohibited employment discrimination).

Lindsey similarly argues that the wrongful termination claim should have survived because it was based on protected activity. That claim, however, fails because Lindsey had an adequate statutory remedy. A tortious discharge claim protects against termination that violates Nevada public

policy and requires both a violation of a strong and compelling public policy and the absence of an adequate alternative remedy. *D'Angelo v. Gardner*, 107 Nev. 704, 718, 819 P.2d 206, 216 (1991); *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989); *Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 560, 216 P.3d 788, 791 (2009). Nevada recognizes a public policy protecting employees who report an employer's illegal activities to outside authorities. *Ceballos v. NP Palace, LLC*, 138 Nev. 625, 629-30, 514 P.3d 1074, 1078 (2022). But NRS 618.445 provides an administrative remedy for employees who suffer retaliation for reporting workplace health and safety violations. Under that provision, an employee may file a complaint with the Division of Industrial Relations and seek relief including reinstatement and reimbursement for lost wages and work benefits. Because NRS 618.445 provides an adequate statutory remedy, Lindsey cannot maintain a wrongful termination claim regardless of whether Lindsey pursued that remedy. See *King v. Amazon.com Services LLC*, No. 2:24-cv-01499-RFB-MDC, 2025 WL 947670, at *2 (D. Nev. Mar. 30, 2025) (dismissing wrongful termination claim in part based on the availability of a statutory remedy); see also *Ozawa*, 125 Nev. at 561, 216 P.3d at 792 (recognizing that a wrongful termination claim fails when an adequate statutory remedy exists, regardless of whether the plaintiff pursues that remedy).

Lindsey argues that the district court erred by dismissing the defamation claim based on absolute privilege. Absolute privilege applies to defamatory statements made in a judicial or quasi-judicial proceeding when such proceedings are contemplated in good faith and under serious consideration and the communication relates to the litigation. *Jacobs v. Adelson*, 130 Nev. 408, 413, 325 P.3d 1282, 1285 (2014); see *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 61, 657 P.2d 101, 104 (1983) (extending

the absolute privilege to a former employer's letter sent to the Nevada Employment Security Department regarding a terminated employee's unemployment benefits). Lindsey's claim was based on respondents' statements to the Department of Employment, Training and Rehabilitation (DETR) accusing Lindsey of misconduct in connection with an unemployment claim. Those statements directly concerned the administrative proceeding because they addressed the basis for Lindsey's termination and eligibility for benefits. *See Williams v. Westgate Las Vegas Resort & Casino*, No. 2:25-cv-00249-MMD-MDC, 2025 WL 3296190, at *2 (D. Nev. Nov. 26, 2025) (dismissing a defamation claim based on an employer's statements to DETR concerning a terminated employee's unemployment benefits as absolutely privileged); *cf. Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005) (recognizing "an absolute privilege for communications published in the course of judicial proceedings, even when statements are false or malicious"). The district court therefore properly determined that the absolute privilege bars Lindsey's defamation claim.

Lindsey contends that the district court abused its discretion by denying leave to amend the complaint. *Hung v. Berhad*, 138 Nev. 547, 551, 513 P.3d 1285, 1289 (Ct. App. 2022) (reviewing for an abuse of discretion a district court's denial of leave to amend). Lindsey's proposed amended complaint contained no new factual allegations that cured the deficiencies in the original complaint. Because the amendment thus would have been futile, the district court did not abuse its discretion in denying leave to amend. *See id.* at 552, 513 P.3d at 1289 (affirming district court denial of motion to amend based on futility).

Finally, Lindsey argues that the district court erred in dismissing the claims against Kona Ice for lack of personal jurisdiction without permitting

jurisdictional discovery. We review a personal jurisdiction determination de novo. *In re Paul D. Burgauer Revocable Living Tr.*, 138 Nev. 801, 805, 521 P.3d 1160, 1165 (2022). To defeat Kona Ice's motion to dismiss, Lindsey was required to make a *prima facie* showing of either general or specific jurisdiction by producing evidence supporting the facts necessary for a finding of personal jurisdiction. *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 692, 857 P.2d 740, 744 (1993). Lindsey relied solely on the allegations in the complaint, but a plaintiff opposing a jurisdictional motion must go beyond the pleadings and proffer competent evidence supporting personal jurisdiction. *Id.* at 693, 857 P.2d at 744. Lindsey's opposition to Kona Ice's motion, which largely mirrored the opposition to the Just Chillin parties' motion to dismiss for failure to state a claim, identified no such evidence. The district court therefore did not err in dismissing the claims against Kona Ice for lack of personal jurisdiction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bell, J.



Stiglich, J.



Cadish, J.

cc: Howard & Howard Attorneys PLLC/Las Vegas
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Caleb Lindsey
Hon. Crystal Eller, District Judge
Eighth District Court Clerk