

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON LEWIS,
Appellant,
vs.
THE STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
PUBLIC SAFETY; AND THE NEVADA
HIGHWAY PATROL,
Respondents.

No. 38959

FILED

JUN 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal is taken from a district court order dismissing a complaint. Aaron Lewis filed a complaint against the State alleging defamation, false light, and intentional infliction of emotional distress. The district court dismissed Lewis' complaint in its entirety for failure to state a claim upon which relief may be granted pursuant to NRCP 12(b)(5).

Lewis was employed as a peace officer for the Lyon County Sheriff's Department (Sheriff's Department) when he applied for a trooper position with the Nevada Highway Patrol (NHP). Lewis claims the NHP denied his application because the Sheriff's Department released "improper, misleading and incorrect information" to the NHP. He also claims an NHP employee revealed confidential information located on his application which led the Sheriff's Department to terminate his employment.

DISCUSSION

The "standard for review of an order granting a motion to dismiss is well recognized. This court will construe the pleadings liberally

and draw every reasonable inference in favor of the non-moving party."¹ All factual recitations set forth in the complaint are to be accepted as true.² "A motion to dismiss should not be granted unless it appears beyond a doubt that the plaintiff could not prove a set of facts that would entitle her to relief."³

Lewis failed to state a claim for defamation because he did not allege the statements in question were false. To establish a claim for defamation, a plaintiff must sufficiently plead the following:

- (a) a false and defamatory statement concerning [plaintiff];
- (b) an unprivileged publication to a third party;
- (c) fault amounting at least to negligence on the part of the publisher; and
- (d) either actionability of the statement irrespective of special harm, or the existence of special harm caused by the publication.⁴

Lewis alleged "an employee of the [NHP] revealed and released confidential information to a sister-agency, which ultimately was provided to [the Sheriff's Department] causing damage to Plaintiff in such a way as to cause him to be terminated from his position." He further alleged that he "has been falsely accused and terminated as a result of

¹Lubin v. Kunin, 117 Nev. 107, 110 n.1, 17 P.3d 422, 425 n.1 (2001).

²Id.

³Id.

⁴Id. at 111, 17 P.3d at 425 (quoting PETA v. Bobby Berosini, Ltd., 111 Nev. 615, 619, 895 P.2d 1269, 1272 (1995) (quoting Restatement (Second) of Torts § 558 (1965)), modified on other grounds by Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 644, 650, 940 P.2d 134, 138 (1997)).

those accusations." Lewis, however, did not allege NHP employees made a false statement. A fundamental element for a defamation claim is that the statement made was false. Since Lewis did not allege a false statement had been made, he has not sufficiently pleaded the necessary elements for a defamation claim. Even if Lewis' statements are accepted as true, he would not be entitled to relief.

It is also fundamental to the false light privacy tort that the matter published concerning the plaintiff is false.⁵ To sufficiently plead a false light claim, a plaintiff must allege

(a) the false light in which the [plaintiff] was placed would be highly offensive to a reasonable person, and

(b) the [defendant] had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the [plaintiff] would be placed.⁶

Since Lewis did not allege that statements made by NHP employees were false, his claim for false light was not sufficiently pleaded.

Lastly, Lewis failed to sufficiently plead a claim for intentional infliction of emotional distress. He did not allege or indicate that he suffered from severe or extreme emotional distress. To establish a claim for intentional infliction of emotional distress, a plaintiff must allege the following:

(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having

⁵Restatement (Second) of Torts § 652E cmt. a (1977).


⁶Id.

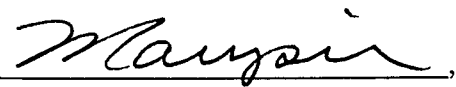
suffered severe or extreme emotional distress and
(3) actual or proximate causation.⁷

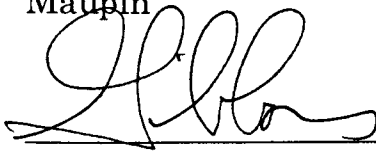
Lewis claimed he experienced mental suffering, but did not claim he suffered severe or extreme emotional distress as a result of actions taken by NHP employees. Although Lewis does not need to use the precise words "severe or extreme emotional distress," he must at least allude to something more than mental suffering. Since Lewis failed to allege facts indicating he suffered from "severe or extreme emotional distress," he did not sufficiently plead a claim for intentional infliction of emotional distress.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Kenneth J. McKenna
Attorney General Brian Sandoval/DMV/Carson City
Washoe District Court Clerk

⁷Star v. Rabello, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981), quoted in Olivero v. Lowe, 116 Nev. 395, 398-99, 995 P.2d 1023, 1025-26 (2000).