IN THE SUPREME COURT OF THE STATE OF NEVADA

GORDON GRAVELLE, D/B/A CODEPRO MANUFACTURING,
Appellant,
vs.
JIM WEBB, D/B/A J. WEBB LOCK & KEY; BERJ MANOUKIAN, D/B/A M B KEY; AND ASSOCIATED LOCKSMITHS OF AMERICA, INC.,
Respondents.

No. 40682

FILED

APR 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment in a tort action. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

After respondent Jim Webb posted a purportedly defamatory letter concerning appellant Gordon Gravelle's invention on a bulletin board at a trade show hosted by respondent Associated Locksmiths of America, Inc. ("ALOA") and on an Internet website for locksmiths, Gravelle instituted a district court action against Webb and ALOA. Gravelle also asserted claims against respondent Berj Manoukian, a locksmith attending the tradeshow, for allegedly distributing a copy of the letter to third parties.

06-08498

The district court granted, under NRCP 12(b)(5), ALOA's motion to dismiss Gravelle's amended complaint,[1] and ultimately granted summary judgment to Webb and Manoukian. Gravelle appeals.[2]

Our review of the order dismissing Gravelle's claims against ALOA is rigorous, as this court, in determining whether Gravelle has set

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[1]On appeal, as in the district court, the amended complaint is the operative complaint. See Randono v. Ballow, 100 Nev. 142, 676 P.2d 807 (1984); McFadden v. Ellsworth Mill and Mining Company, 8 Nev. 57 (1872).

[2]Gravelle also purports to challenge the following district court orders: (1) a November 14, 2001 order granting ALOA's motion to dismiss with prejudice Gravelle's original complaint; (2) a March 1, 2002 order denying Gravelle's motion for leave to amend the complaint; (3) the February 5, 2003 order concerning Gravelle's motion for reconsideration; and (4) the portion of the November 21, 2002 order (more formally memorialized, albeit belatedly, in a May 28, 2003 order) denying his request to defer the hearing on Webb's and Manoukian's motions for summary judgment.

As regards the November 14, 2001 and March 1, 2002 orders, the court, thereafter, granted Gravelle's second motion to amend his complaint, allowing him to assert new causes of action against ALOA. With respect to the February 5, 2003 order, the court granted the motion and considered Gravelle's extensive supporting documents. Lastly, concerning the November 21, 2002 order, to the extent it denied Gravelle's request for a continuance, the court granted Gravelle's subsequent motion for reconsideration (the February 5, 2003 order), thus providing him ample opportunity to prepare and submit argument and exhibits in opposition to the summary judgment motions. Accordingly, as Gravelle is not aggrieved by any of the above orders, he lacks standing to challenge them, and they are not further addressed in this order. See NRAP 3A(a); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994) (providing that a party is "aggrieved" within the meaning of NRAP 3A(a) when a court's order adversely and substantially affects either a personal right or right of property).

forth allegations sufficient to make out a right to relief,[3] accepts all factual allegations in his amended complaint as true and construes all reasonable inferences in his favor.[4] The dismissal of Gravelle's claims against ALOA was proper only if his allegations, as presumed true, would not entitle him to relief.[5] Having reviewed the record in light of these principles, we conclude that the district court correctly dismissed Gravelle's claims against ALOA for negligence[6] and breach of contract.[7]

Gravelle also challenges the district court orders that granted summary judgment to Webb and Manoukian. This court reviews the orders granting summary judgment to Webb and Manoukian de novo.[8] Summary judgment was appropriate if the pleadings and other evidence

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[3]Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

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

[5]Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

[6]See Gunlock v. New Frontier Hotel, 78 Nev. 182, 185, 370 P.2d 682, 684 (1962) (stating that "[t]he mere fact that there was an accident or other event and someone was injured is not of itself sufficient to predicate liability[; n]egligence is never presumed"); see generally Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 1101, 864 P.2d 796, 799 (1993) (limiting the duty of a proprietor to protect an invited guest from a third party's actions).

[7]See Lipshie v. Tracy Investment Co., 93 Nev. 370, 379, 566 P.2d 819, 824-25 (1977) (holding that a clear promissory intent to benefit a third party is required to obtain status as a third party beneficiary of an agreement); Smith v. Recrion Corp., 91 Nev. 666, 668-69, 541 P.2d 663, 664-65 (1975) (providing that an implied contract requires an ascertainable agreement, including an intent to contract by both parties and an exchange of promises).

[8]See Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

on file, viewed in a light most favorable to Gravelle, demonstrate that no genuine issue of material fact remains in dispute and that Webb and Manoukian were entitled to judgment as a matter of law.[9]

Having considered the record in light of this standard, we conclude that the district court did not err when it granted summary judgment to Webb and Manoukian on Gravelle's amended complaint, which asserted claims against them for defamation,[10] negligence,[11] tortious interference with prospective economic trade advantage,[12]

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[9]Id.

[10]See Lubin v. Kunin, 117 Nev. 107, 17 P.3d 422 (2001) (listing the elements necessary to create liability for defamation); Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (providing that "[s]tatements of opinion cannot be defamatory"); id. at 715, 57 P.3d at 88 (providing that, in determining whether a statement is merely opinion, the court asks "'whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact'" (quoting Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 410, 664 P.2d 337, 342 (1983))).

[11]See Gunlock, 78 Nev. at 185, 370 P.2d at 684 supra note 6; Harrington v. Syufy Enters., 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997) (noting that a defendant need only negate one of the elements of a negligence cause of action to establish entitlement to summary judgment).

[12]See Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727, 729 (1993) (stating that a claim for tortious interference with prospective economic trade advantage requires a prospective contractual relationship and knowledge by the actor of that prospective agreement).

intentional infliction of emotional distress,[13] negligent infliction of emotional distress,[14] and invasion of privacy.[15]

Concerning the district court's awards of costs and attorney fees to Webb, Manoukian, and ALOA, we have consistently recognized that "[t]he decision to award attorney fees is within the [district court's] sound discretion . . . and will not be overturned absent a 'manifest abuse of discretion,'"[16] and that "[t]he determination of allowable costs is within the sound discretion of the trial court."[17] Having considered the record in light

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[13]See Maduike v. Agency Rent-A-Car, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (stating that a claim for intentional infliction of emotional distress requires extreme and outrageous conduct).

[14]See Olivero v. Lowe, 116 Nev. 395, 399, 995 P.2d 1023, 1026 (2000) (clarifying that when, as here, it is alleged that emotional distress precipitated physical symptoms, evidence of severe emotional distress that causes physical injury or illness is required); see also Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (stating that "general physical or emotional discomfort are insufficient to satisfy the physical impact requirement").

[15]See Flowers v. Carville, 310 F.3d 1118, 1132 (9th Cir. 2002) (providing that false light requires knowing disregard for the truth manifested by an implicit false statement of objective fact).

[16]Kahn v. Morse & Mowbray, 121 Nev. __, __, 117 P.3d 227, 238 (2005) (quoting County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982)).

[17]Bobby Berosini, Ltd. v. PETA, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998); see Adler v. Vaicius, 27 Cal. Rptr. 2d 32, 36 (Ct. App. 1993) (analyzing an analogous attorney fee statute and providing that a defendant in whose favor a dismissal has been entered constitutes a prevailing party and thus has the right to seek attorney fees after the dismissal of a complaint); Thornber v. City of Ft. Walton Beach, 568 So. 2d 914, 919 (Fla. 1990) ("A determination on the merits is not a prerequisite to an award of attorney[ ] fees where the statute provides that they will inure to the prevailing party."); cf. Sun Realty v. District Court, 91 Nev.

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of the broad discretion left to the district court in this area, we conclude that the district court's attorney fees and costs awards were not a manifest abuse of its discretion.[18]

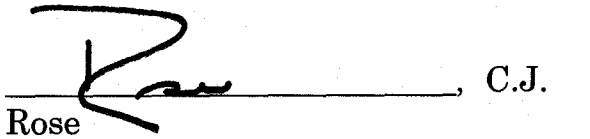
Finally, we note that Gravelle's argument that his counsel's withdrawal from the underlying case prejudiced him and violated EDCR 7.40(b)(2) and (c), invalidating the summary judgments against him, is disingenuous. Gravelle stipulated to his attorney's withdrawal—evidenced by his signature on the stipulation filed with the district court—and substituted himself as counsel. Thus, this argument is without merit.

. . . *continued*
774, 542 P.2d 1072 (1975) (annulling an award of attorney fees where there was no discernable prevailing party because the district court, on its own motion, had declared a mistrial).

[18]See NRS 18.005(17), 18.010(2)(b), and 18.020(3). In particular, concerning the award of costs to ALOA, we note that ALOA's agreement with the Las Vegas Convention & Visitors Authority specifically contemplated that ALOA would indemnify the Convention Authority for the defense of any causes of action arising from ALOA's use of its premises (the district court determined as much in its order granting the Convention Authority summary judgment on its cross-claim against ALOA for indemnity). Thus, although the January 9, 2002 order dismissing the Convention Authority with prejudice noted that Gravelle and the Convention Authority would bear their own attorney fees and costs, the district court did not abuse its discretion when, as part of its costs award to ALOA, the court allowed ALOA to recover, as an "expense incurred in connection with the action," the amount of its indemnity to the Convention Authority. See NRS 18.005(17).

Accordingly, we affirm the district court's judgment.[19]

It is so ORDERED.[20]



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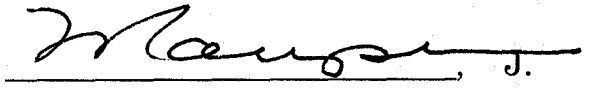
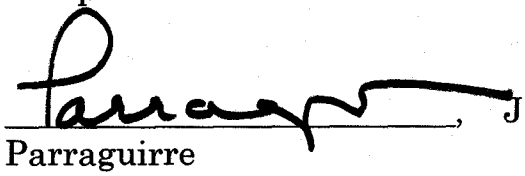
Rose



_____, J.
Maupin



_____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Gordon Gravelle
Alverson Taylor Mortensen Nelson & Sanders
John Thayer Clark
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
Clark County Clerk

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[19]Additionally, Gravelle attempts to challenge district court post-judgment orders that denied his motions to alter the judgment, for leave to file a second amended complaint, and for recusal, and an order that granted a motion to compel discovery. Those orders are not appealable. See NRAP 3A(b) (outlining the appealable judgments and orders); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists); see also Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

[20]Having considered all the issues raised by Gravelle, we conclude that his other contentions lack merit and thus do not warrant reversal of the district court's judgment.

In light of this order, we deny Gravelle's request that we impose sanctions on counsel for Webb and Manoukian.