IN THE SUPREME COURT OF THE STATE OF NEVADA

KELLY WHITING, AN INDIVIDUAL,
Appellant,
vs.
MAXIM HEALTHCARE SERVICES, INC., A FOREIGN CORPORATION,
Respondent.

No. 56432

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Nealon
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a tortious discharge employment matter. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Appellant Kelly Whiting filed a complaint in district court against respondent Maxim Healthcare Services, Inc., alleging a claim for tortious discharge in violation of public policy. The claim arose from appellant's alleged whistleblowing action against respondent, her employer, when she complained to the corporate headquarters about sexual harassment in the workplace, a hostile work environment, and other "activities which violated important public policy." Respondent filed a motion to dismiss, which appellant opposed. The district court granted the motion to dismiss, finding that appellant's action was not protected by Nevada's whistleblower laws because she had acted in a private or proprietary manner, her reporting did not constitute protected conduct and thus she could not prove the required causation, and she had not alleged that her employer had coerced her into participating in fraudulent activity. On appeal, appellant urges this court to clarify the precedent set in Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292-93, 774 P.2d 432, 433-34 (1989), and to expand whistleblowing protection to cover internal

reporting. She also asserts that the district court ignored the allegation that she had "refused to violate the law."

Having considered the parties' arguments and the record before us, we conclude that appellant failed to plead facts that would constitute protected activity under Nevada's tortious discharge law or whistleblowing statute. See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008) (noting that this court reviews an order granting an NRCP 12(b)(5) motion to dismiss de novo under a rigorous standard of review). This court has recognized protections for whistleblowers, but such protections are limited to an employee who reports activity to the appropriate authorities outside the company. See Wiltsie, 105 Nev. at 293, 774 P.2d at 433-34; see also NRS 357.240. We are not compelled to extend the grounds for a whistleblowing claim beyond the limits set forth in Wiltsie. See Secretary of State v. Burk, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) ("[U]nder the doctrine of stare decisis, [this court] will not overturn [precedent] absent compelling reasons for so doing. Mere disagreement does not suffice." (internal citations omitted)). Appellant concedes that she made her complaint only to the internal corporate headquarters and not to any governmental agency, and thus, her reporting was not protected as whistleblowing. See Wiltsie, 105 Nev. at 293, 774 P.2d at 433. Further, appellant failed to set forth any legal support for the argument that failing to report the alleged misconduct would be an illegal act and would thus give rise to a tortious discharge claim.[1] See Edwards v. Emperor's Garden Rest., 122 Nev. 317,

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[1]Moreover, appellant did not argue that she "reasonably believed" that not reporting the allegations was illegal. See Allum v. Valley Bank of Nevada, 114 Nev. 1313, 1324, 970 P.2d 1062, 1068 (1998) (recognizing that tortious discharge claims can arise when "an employee . . . was terminated

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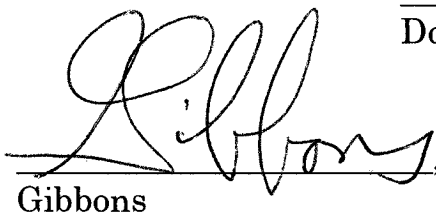
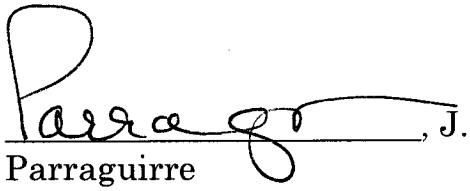
330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that because appellant did not present relevant authority and cogently argue his position on appeal, this court would not consider his appellate contentions). Therefore, we conclude that appellant's conduct was not protected under tortious discharge law and that she failed to state a claim upon which relief could be granted. Accordingly, we

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

_____, J.
Douglas



_____, J.
Gibbons



_____, J.
Parraguirre

...*continued*
for refusing to engage in conduct that he, in good faith, reasonably believed to be illegal"). In appellant's appellate reply brief, she asserts for the first time that she "perceived" that her supervisor's order to not report her allegations to corporate headquarters was illegal. We decline to address this new argument. Francis v. Wynn Las Vegas, 127 Nev. ___, ___ n.7, 262 P.3d 705, 715 n.7 (2011) (declining to consider an argument raised for the first time in a party's reply brief).

[2]Appellant also asserts that the district court erred by not construing the facts pleaded in the light most favorable to her when the court determined that she had been fired for cause and not in retaliation. While the district court may have erred in making this factual finding when granting the motion to dismiss, based on our determination that appellant did not engage in protected conduct, we conclude that any such error does not affect the substantial rights of the parties or change this court's conclusion. NRCP 61; Wyeth v. Rowatt, 126 Nev. ___, ___, 244 P.3d 765, 778 (2010) (noting that reversal is generally not warranted for an error that does not affect a party's substantial rights).

cc: Second Judicial District Court, Department 9
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