

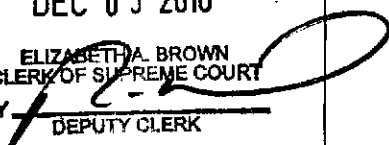
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBERT ROY HOLMES,  
Appellant,  
vs.  
RAND BALLARD,  
Respondents.

No. 75378-COA

**FILED**

DEC 05 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Wilbert Roy Holmes appeals a district court order dismissing a complaint in a tort action.<sup>1</sup> Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.

In the proceedings below, Wilbert filed suit against respondent Rand Ballard and Wilbert's ex-wife Capucine Holmes, alleging intentional infliction of emotional distress based on his allegation that respondent engaged in an extramarital affair with Capucine, while Capucine was married to Wilbert. The district court granted Rand's motion to dismiss pursuant to NRCP 12(b)(5), and this appeal followed.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal with all alleged facts in the complaint presumed true and all inferences drawn in

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<sup>1</sup>The record demonstrates that Capucine Holmes did not appear in the underlying action, and thus, is not a proper party to this appeal. See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994) (explaining that a person who does not appear below is not a party to that action). Thus, the clerk of the court shall amend the caption for this case to conform to the caption on this order.

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favor of the complainant. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. This court will affirm the decision to dismiss a complaint under NRCP 12(b)(5) when the complaint's factual allegations do not entitle a plaintiff to relief under the claims asserted. *Id.*

Here, Wilbert claims injuries based on the alleged extramarital affair and his subsequent divorce from Capucine as a result. Although titled as a claim for intentional infliction of emotional distress, the allegations assert a civil cause of action for alienation of affections and criminal conversation. *See Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 809, 312 P.3d 491, 498-99 (2013) (explaining that this court analyzes "a claim according to its substance, rather than its label"); *Criminal Conversation*, *Black's Law Dictionary* (10th ed. 2014) (defining criminal conversation as "[a] tort action for adultery, brought by a husband against a third party"). Civil tort claims based on adultery have been specifically abolished in Nevada. *See* NRS 41.380 (abolishing "[a]ll civil causes of action for . . . alienation of affections, and criminal conversation"). Thus, based on our review of the record, we agree that, even taking Wilbert's allegations as true, his complaint fails to state a claim upon which relief can be granted. *See Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, C.J.

Silver

 \_\_\_\_\_, J.

Tao

 \_\_\_\_\_, J.

Gibbons

cc: Hon. Mark B. Bailus, District Judge  
Wilbert Roy Holmes  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Capucine Yolanda Holmes  
Eighth District Court Clerk