

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONJA BROWN,
Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF CORRECTIONS;
NEVADA BOARD OF PARDONS
COMMISSIONERS; FORMER
GOVERNOR BRIAN SANDOVAL;
FORMER ATTORNEY GENERAL
ADAM P. LAXALT; SUPREME COURT
JUSTICE MARK GIBBONS; SUPREME
COURT JUSTICE JAMES W.
HARDESTY; SUPREME COURT
JUSTICE RONALD D. PARRAGUIRRE;
SUPREME COURT JUSTICE
KRISTINA PICKERING; FORMER
SUPREME COURT JUSTICE MICHAEL
A. CHERRY; FORMER SUPREME
COURT JUSTICE MICHAEL L.
DOUGLAS; FORMER SUPREME
COURT JUSTICE NANCY M. SAITTA;
JUDGE MICHAEL GIBBONS; JUDGE
JEROME T. TAO; AND FORMER
COURT OF APPEALS JUDGE ABBI
SILVER,
Respondents.¹

No. 75565-COA

FILED

JUL 01 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tonja Brown appeals from a district court order dismissing her case. First Judicial District Court, Carson City; James E. Wilson, Judge.

¹We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

In connection with her efforts to posthumously exonerate her brother of the crimes for which he was convicted, Brown sued the respondent state agencies and officials, asserting twelve causes of action against them, including contract, tort, and civil rights claims. For support, Brown alleged, among other things, that she was involved in a prior federal action, which was resolved through a settlement agreement; that respondents violated this agreement; that she and her brother were defamed as a result; and that certain respondents should have recused themselves from presiding over her appeal and petition for review in a separate state court action that preceded the present action. Respondents moved to dismiss Brown's complaint under NRCP 12(b)(5),² asserting that she failed to state a claim for various reasons. Over Brown's opposition, the district court granted the motion. 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). 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 favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

²On December 31, 2018, the Nevada Supreme Court amended the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure, effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). But those amendments do not affect the disposition of this appeal, as they became effective after the district court granted respondents' motion to dismiss.

On appeal, Brown challenges the propriety of the dismissal of her case. Initially, we note that the focus of Brown's amended complaint is on her efforts to enforce the settlement agreement against certain respondents, particularly, the Nevada Board of Pardons Commissioners and the individual pardons commissioners, in order to compel them to include certain documents in her brother's Board file. Under Brown's theory of the case, these parties' failure to abide by the terms of the agreement and include those documents in his file gave rise to a claim for breach of contract and other related claims.

As a preliminary matter, and contrary to Brown's arguments, we note that the agreement contains no language that compels these respondents to include the documents in Brown's brother's file. Regardless, the settlement agreement is not enforceable against the Board or any of the pardons commissioners, as they were not parties to that agreement. *See Equal Emp't Opportunity Comm'n v. Waffle House, Inc.*, 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."). Consequently, Brown's allegations regarding the purported breach of the settlement agreement did not give rise to a cognizable claim under any breach of contract theory.³ Thus, the district court properly dismissed Brown's breach of contract claim and other related claims.

³To the extent Brown seeks to challenge the interpretation or enforcement of the settlement agreement as to those parties subject to it, her claims would not properly be before the state court, as the agreement expressly provides that the United States District Court for the District of Nevada, Reno Division, retains exclusive, continuing jurisdiction "to enforce, interpret, clarify, or settle disputes concerning th[e settlement] agreement."

Turning to Brown's defamation, libel, and slander claims against all respondents, we conclude they are without merit. Although Brown maintains that her brother's Board file contains inaccurate information, her related allegations regarding respondents' failure to correct that information do not support a defamation, libel, or slander claim, as she did not allege that any of them made a false or defamatory statement against her or her brother or otherwise placed the inaccurate information in her brother's file. See *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993) (discussing false statements as an element of slander); *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (explaining that a false or defamatory statement is an element of defamation); *Wellman v. Fox*, 108 Nev. 83, 86, 825 P.2d 208, 210 (1992) (providing that libel claims require publication of a false statement of fact); see also *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993) (explaining that, in evaluating an NRCP 12(b)(5) motion, the court must determine whether "the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief" (internal quotation marks omitted)).

Thus, given that Brown failed to allege that respondents actually made any false or defamatory statements, we conclude that the district court did not err in dismissing her defamation, libel, and slander claims. *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672. As we have determined that dismissal was appropriate on this basis, we decline to address these claims further.

Next, Brown contends in her amended complaint that the respondent justices and judges improperly failed to recuse themselves from her prior state court proceeding and, therefore, violated her constitutional


rights, including free speech and due process, as well as engaged in other types of conduct against her, allegedly resulting in additional claims, including but not limited to, conspiracy, defamation, libel, slander, personal injury, emotional distress, public injustice, malice and conscious disregard. As the respondent justices' and judges' actions in the separate state court proceeding were intimately related to their judicial functions, they are entitled to absolute judicial immunity. *See State v. Second Judicial Dist. Court*, 118 Nev. 609, 614-15, 55 P.3d 420, 423-24 (2002) (recognizing that judges, in connection with their judicial functions, are afforded absolute judicial immunity, which is "a broad grant of immunity not just from the imposition of civil damages, but also from the burdens of litigation, generally"); *see also Corliss v. O'Brien*, 200 Fed. App'x 80, 83 (3d Cir. 2006) ("A judge's decision not to recuse himself from a case in which he holds a personal interest is itself an exercise of judicial authority protected by the doctrine of absolute immunity."). Based on the foregoing, we agree that the district court properly dismissed all claims against the judicial officers.

Finally, having considered Brown's remaining arguments on appeal, we conclude that they are without merit or lack cogency. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues that are not supported by cogent argument). Specifically, Brown failed to demonstrate that she was entitled to relief under any of the legal theories in her amended complaint, and as a result, she likewise failed to establish that she was entitled to injunctive relief. *See State Farm Mut. Auto. Ins. Co. v. Jafbros Inc.*, 109 Nev. 926, 928, 860 P.2d 176, 178 (1993) (providing that permanent injunctive relief is available where the plaintiff succeeds on the merits). Thus, we are constrained to conclude that the district court did not err in

dismissing her amended complaint and we therefore affirm the district court's order.⁴ See *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672.

It is so ORDERED.⁵


_____, A.C.J.
Bulla


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

cc: Hon. James E. Wilson, District Judge
Tonja Brown
Attorney General/Las Vegas
Carson City Clerk

⁴Insofar as Brown's remaining causes of action are based on legal theories that do not set forth proper claims, such as the one for "first impression," or include alleged statutory violations under Chapters 199 and 200, which do not give rise to private causes of action, we affirm dismissal. Likewise, we have considered all of the remaining arguments presented in Brown's informal brief, and to the extent they are not addressed herein, we conclude that they do not warrant reversal. See *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

⁵Chief Judge Michael P. Gibbons and Judge Jerome T. Tao voluntarily recused themselves from this case. In their place, the Honorable Robert E. Rose, Senior Justice, and the Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered on May 2, 2019. Nev. Const. art. 6, § 19(1)(c); SCR 10.