IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HEATHER MATTHEWS, AN INDIVIDUAL,
Appellant,
vs.
CALIFORNIA STATE UNIVERSITY, A CALIFORNIA PUBLIC ENTITY,
Respondent.

No. 81120-COA

FILED

APR 16 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Heather Matthews appeals from a district court order of dismissal and a post-judgment motion denying NRCP 60(b) relief. First Judicial District Court, Carson City; James E. Wilson, Judge.

Matthews is an alumnus of respondent, California State University (CSU), and graduated from the university with a master's degree in career counseling. While at CSU, Matthews received a prestigious academic award, and thereafter appeared in promotional material for the university. However, Matthews' relationship with CSU eventually soured, leading to Matthews' refusal to participate in any of CSU's future promotional efforts.

After graduating from CSU, Matthews authored a book that she intended to publish through non-party Mill City Press. However, negotiations fell through and Mill City Press declined to publish the book. Believing that this turn of events was due to CSU retaliating against her, Matthews thereafter filed a complaint in district court alleging that CSU "bribed" Mill City Press, and other corporations and individuals in Northern Nevada, to interfere with and prevent her from publishing her book. In her complaint, Matthews stated a cause of action for negligence, requested relief

under Nevada's criminal statutes for "Harassment" and "Aggravated Stalking," and requested compensatory and punitive damages.

Shortly after Matthews filed her complaint, CSU filed a motion to dismiss under NRCP 12(b)(1) and NRCP 12(b)(5), arguing that the doctrine of sovereign immunity, as applied by the United States Supreme Court, in *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485 (2019), bars Matthews' suit against CSU, as the university is an arm of the state of California. After full briefing on the matter, but without oral argument, the district court granted the motion to dismiss with prejudice, concluding that the doctrine of sovereign immunity barred Matthews' suit.

Matthews immediately appealed the dismissal, and filed a post-judgment motion for reconsideration, asking the district court to vacate its order granting the motion to dismiss. But her appeal was ultimately dismissed for failure to pay the filing fee. *See Matthews v. California State University*, Docket No. 79455 (Order Dismissing Appeal, October 1, 2019). With regard to the post-judgment motion, after the motion was fully briefed, the court denied that motion without oral argument.

Matthews subsequently filed a second post-judgment motion seeking to vacate the dismissal order, which reiterated many of the same arguments Matthews made in her initial opposition to the motion to dismiss, argued that the district court incorrectly applied the law by adopting CSU's arguments, and requested NRCP 60(b) relief.[1] CSU opposed, and the district court eventually denied this motion on the grounds that Matthews failed to present new law or facts that would warrant

[1]Matthews filed another notice of appeal while her second post-judgment motion was pending, but this appeal was dismissed by the supreme court for lack of jurisdiction due to the pending tolling motion. *See also Matthews v. California State University*, Docket No. 79898, (Order Dismissing Appeal, January 6, 2020).

reconsideration. Matthews now appeals the order granting the motion to dismiss, and the denial of her second post-judgment motion for relief.

This court reviews a district court order granting a motion to dismiss de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008) (reviewing a district court order granting a motion to dismiss de novo and explaining that such an order will be upheld "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief"); *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) (reviewing subject matter jurisdiction de novo).

In her informal brief, Matthews' advances several arguments contending that CSU is not entitled to sovereign immunity in this case. In particular, Matthews argues that (1) interstate sovereign immunity is not contemplated by the United States Constitution and that; (2) even if sovereign immunity applied to California, CSU should not be considered an "arm of the state" so as to extend the protections of sovereign immunity.[2] However, these arguments ignore the United States Supreme Court's holding in *Hyatt*, which held that the Constitution "affirmatively altered the relationships between the states" and that "[e]ach State's equal dignity and sovereignty under the Constitution implies certain constitutional 'limitation[s] on the sovereignty of all of its sister States." 139 S. Ct. at

[2]Matthews' also contends that Nevada's Tort Claims Act allows Nevada citizens to sue the State of California for certain intentional torts and "criminal activities." But this argument is inapposite, as the Nevada Tort Claims Act is a limited waiver of *Nevada's* sovereign immunity in this state, and does not permit this State to refuse sovereign immunity to the State of California. *See* NRS 41.031 (stating that "*[t]he State of Nevada* hereby waives *its* immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations" (emphasis added)).

1497. Accordingly, the Court held that "States retain their sovereign immunity from private suits brought in the courts of other States." *Id.* at 1492.

Additionally, "[i]t has long been settled that the [Eleventh Amendment's] reference to actions 'against one of the United States' encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." *Regents of the Univ. of California v. Doe*, 519 U.S. 425, 429, 117 S. Ct. 900, 903, 137 L. Ed. 2d 55 (1997). And as relevant here, the California State University Board of Trustees has traditionally enjoyed sovereign immunity as an arm of the State of California. *See Stanley v. Trustees of California State University* (9th Cir. 2006) 433 F.3d 1129, 1133 (holding that California State University "Trustees are an arm of the state that can properly lay claim to sovereign immunity"); *Jackson v. Hayakawa* (9th Cir. 1982) 682 F.2d 1344, 1350 (stating that the "University of California and [its] Board of Regents are considered to be instrumentalities of the state for purposes of the Eleventh Amendment").

As CSU is an arm of the State of California, we conclude that the district court properly dismissed Matthews' complaint for lack of subject matter jurisdiction under *Franchise Tax Bd. of California v. Hyatt* on sovereign immunity grounds. *See Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002), *overruled on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007) (holding that the district court may properly dismiss a complaint when a lack of subject matter jurisdiction is apparent on the face of the complaint); NRCP 12(h)(3).

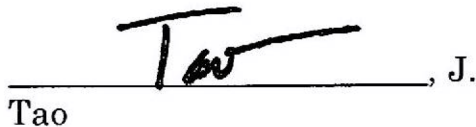
Because we conclude that the district did not err in dismissing Matthews' complaint for lack of subject matter jurisdiction, we further conclude that the district court did not abuse its discretion in denying

Matthews' post-judgment motion for relief from the dismissal order. *Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015) (reviewing a district court's decision to deny an NRCP 60(b) motion for an abuse of discretion).[3]

Therefore, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.[4]

_______________, C.J.
Gibbons



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cc: Hon. James E. Wilson, District Judge
Heather Matthews
Robison, Sharp, Sullivan & Brust
Carson City Clerk

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[3]To the extent that Matthews contends that the district court abused its discretion by (1) adopting and signing a proposed order prepared by CSU's counsel; and (2) ruling on the motions without oral argument, we find that these contentions are without merit in light of the rules of practice for the First Judicial District Court. *See* FJDCR 3.10(a)(requiring "[a] party filing a motion [to] attach to the motion an original proposed order"); FJDCR 3.12(a)(providing that "[d]ecisions will be rendered without oral argument *unless* otherwise ordered by the court" (emphasis added)).

[4]Insofar as Matthews raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal. Further, in light of our resolution of this appeal, we necessarily deny all pending requests for relief in this matter.