


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD WALTER LAW, AN
INDIVIDUAL, IN PRO PER,
Appellant,
vs.
PROGRESSIVE DIRECT INSURANCE
COMPANY,
Respondent.

No. 84678-COA

FILED

AUG 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald Walter Law appeals from a district court order granting the respondent's motion to dismiss. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

In June 2021, Law filed an amended complaint for negligence, negligent hiring/supervision/training, and fraud against respondent Progressive Direct Insurance Company based on an October 2017 collision between his vehicle and that of an unnamed Progressive-insured driver.

Progressive subsequently filed a motion to dismiss Law's complaint, noting it had accepted liability. Law opposed the motion. The district court entered an order granting Progressive's motion to dismiss, concluding that Law's claims constituted an impermissible direct action against Progressive by a third party and were also barred by the statute of limitations, which the court concluded had expired in October 2019.

Law filed a motion to reconsider, which Progressive opposed. The district court denied Law's motion. This appeal followed.

On appeal, Law challenges the district court's dismissal of his complaint. 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.

In this case, Law's amended complaint alleges various negligence and fraud-based claims against Progressive. However, Nevada "is not a direct action state" and therefore Law cannot maintain these claims directly against Progressive under the circumstances presented here. *See Hall v. Enterprise Leasing Co.-W.*, 122 Nev. 685, 693, 137 P.3d 1104, 1109 (2006) (internal quotation marks omitted). Further, to the extent that Law's complaint can be read as alleging that Progressive acted in bad faith in the handling of his insurance claim thereby causing him injury, this constitutes a direct action against Progressive and is not permitted under Nevada law, without first having successfully brought an action against Progressive's insured and then receiving an assignment from the insured to bring such a claim, none of which occurred here. *Gallegos v. Malco Enters., of Nev., Inc.*, 127 Nev. 579, 583, 255 P.3d 1287, 1289 (2011) (citing *Wilson v. Bristol West Ins. Group*, 2009 WL 3105602, at *2 (D. Nev.

Sept. 21, 2009) with approval for the proposition that, although Nevada does not recognize a private right of action by a third-party claimant against an insurance company for bad faith, a third-party claimant may bring a claim for bad faith with a proper assignment of rights); *Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 541, 353 P.3d 1203, 1211 (2015) (providing that “[t]hird-party claimants do not have . . . standing to claim bad faith”); see also *Roberts v. Farmers Ins. Co.*, 91 Nev. 199, 200, 533 P.2d 158, 159 (1975) (concluding that the defendant-insurer was not a proper party to an action to recover damages for injuries sustained in an automobile collision “since a final judgment against the insured is precondition to the plaintiff’s right to relief against [the insurer]”). Accordingly, Law cannot demonstrate that he would be legally entitled to relief under the facts and circumstances presented, *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672, and, therefore, the district court did not err in dismissing his amended complaint pursuant to NRCP 12(b)(5).¹

Finally, Law briefly argues that the district court exhibited bias in the proceedings below. However, he fails to cogently argue his position. Accordingly, we need not address his claims of judicial bias. See *Edwards*

¹We note that the district court alternatively dismissed the complaint based on the statute of limitations. But because Law could not bring his tort claims directly against Progressive, the limitations period does not apply. See *Hall*, 122 Nev. at 687 n.2, 137 P.3d at 1106 n.2. Thus, the district court erred in relying on the statute of limitations as an alternative basis to dismiss Law’s tort claims. Nonetheless, because we conclude the complaint was properly dismissed under NRCP 12(b)(5), this error was harmless. Cf. NRCP 61 (providing that courts must disregard harmless error).

v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Ronald Walter Law
Dennett Winspear, LLP
Washoe District Court Clerk

²Insofar as the parties raise 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.