

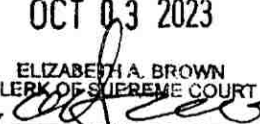
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA BRESLAW,  
Appellant,  
vs.  
PETER COOPER,  
Respondent.

No. 86570-COA

**FILED**

OCT 03 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Lisa Breslaw appeals from a district court order dismissing her complaint under NRCP 12(b)(5) in a tort action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

This appeal relates to Breslaw's complaint against respondent Peter Cooper, wherein she alleges that Cooper committed tortious conduct against her by posting libelous statements on the social media platform Reddit.com in 2019. As relevant here, following the dismissal of her initial action, Breslaw filed the instant complaint on February 14, 2022. Cooper then filed a motion to dismiss, alleging—among other things—that Breslaw's complaint should be dismissed under NRCP 12(b)(5) as the statute of limitations on her claims had run. Following full briefing and a hearing on the motion, the district court entered its order granting Cooper's motion to dismiss on those grounds.

In so doing, the district court found Breslaw's assertions related to the discovery rule and equitable tolling—two doctrines of law that may toll the statute of limitations—did not apply to extend the limitations period in this case. Breslaw now appeals, arguing in relevant part that the district court erroneously determined that equitable tolling did not apply to toll the application of the statute of limitations. Cooper, in his answering brief,

avers that the untimely filing of the second complaint in this matter warranted dismissal under NRCP 12(b)(5).

The district court may dismiss an action under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted when the action is barred by the statute of limitations. *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998). This court reviews a district court's dismissal for failure to state a claim pursuant to NRCP 12(b)(5) de novo, treating all alleged facts in the complaint as true and drawing all inferences in favor of the complainant. *Fausto v. Sanchez-Flores*, 137 Nev. 113, 114, 482 P.3d 677, 679 (2021). District courts have full discretion to fashion and grant equitable remedies, and this court reviews those determinations for an abuse of discretion. *Am. Sterling Bank v. Johnny Mgmt. LV, Inc.*, 126 Nev. 423, 428, 245 P.3d 535, 538 (2010); *see also Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 1003 (9th Cir. 2006) (reviewing a district court's dismissal on the basis of the applicable statute of limitations de novo but reviewing its decision whether to apply equitable tolling for an abuse of discretion). A district court abuses its discretion when it incorrectly applies the law. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014).

Here, both parties acknowledge that the claims in Breslaw's complaint fall under the two-year statute of limitations under NRS 11.190(4)(c) and (e). And while the two-year statute of limitations generally begins to run "when the wrong occurs and a party sustains injuries for which relief could be sought," *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990), the doctrine of equitable tolling "is a nonstatutory remedy that permits a court to suspend a limitations period and allow an otherwise untimely action to proceed when justice requires it." *Fausto*, 137 Nev. at 115, 482 P.3d at 680 (citing 51 Am. Jur. 2d *Limitation of Actions* § 153 (2021 update)).

In addressing the application of equitable tolling to NRS 11.190(4)(e), the court in *Fausto* clarified that, when considering whether the doctrine applies, district courts must analyze the applicable factors under *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983) (adopting equitable tolling in the employment discrimination context), which include: (1) the diligence of the plaintiff and the plaintiff's knowledge of the relevant facts; (2) reliance on authoritative statements by the ruling body; (3) deception or false assurances from the opposing party; (4) prejudice to the opposing party that "would actually result from delay during the time that the limitations period is tolled;" and (5) any other applicable equitable circumstances. *Fausto*, 137 Nev. at 117, 482 P.3d at 681. But because the *Copeland* factors are nonexhaustive, the supreme court clarified that "when a plaintiff seeks to equitably toll the limitations period in NRS 11.190(4)(e), the plaintiff must demonstrate that he or she acted diligently in pursuing his or her claim and that extraordinary circumstances beyond his or her control caused his or her claim to be filed outside the limitations period." *See id.*, at 118, 482 P.3d at 681-82.

Here, the district court properly analyzed several of the *Copeland* factors in its order, and correctly found that Breslaw diligently pursued her claim. Nevertheless, the district court failed to analyze the latest factor recognized in *Fausto*—whether extraordinary circumstances outside of Breslaw's control impacted her ability to file her claim within the statute of limitations. *See id.* at 117, 482 P.3d at 681; *see also Copeland*, 99 Nev. at 826, 673 P.2d at 492 (adopting the doctrine of equitable tolling and noting that "procedural technicalities that would bar claims . . . will be looked upon with disfavor"). Because the district court failed to apply the full legal analysis by analyzing this factor, it abused its discretion. *Gunderson*, 130 Nev. at 80, 319 P.3d at 615. We therefore reverse the order of the district court and remand for a full and proper application of the

*Fausto* analysis, including consideration of the extraordinary circumstances factor. See *In re Guardianship of B.A.A.R.*, 136 Nev. 494, 500, 474 P.3d 838, 844 (Ct. App. 2020) (“[B]ecause it is not clear that the district court would have reached the same conclusion . . . had it applied the correct [legal] standard . . . , we must reverse the district court’s decision and remand for further proceedings.”).

It is so ORDERED.<sup>1</sup>

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

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

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

cc: Hon. Maria A. Gall, District Judge  
Lisa Breslaw  
Raich Law PLLC  
Eighth District Court Clerk

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<sup>1</sup>Insofar 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.