

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TENKASI VISWANATHAN,
Appellant,
vs.
BOARD OF TRUSTEES OF THE
CLARK COUNTY SCHOOL DISTRICT;
DR. EDWARD GOLDMAN IN HIS
OFFICIAL AND INDIVIDUAL
CAPACITY; AND LOUIS MARKOUZIS
IN HIS OFFICIAL AND INDIVIDUAL
CAPACITY
Respondents.

No. 84448-COA

FILED
NOV 17 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tenkasi Viswanathan appeals from a district court summary judgment in a breach of contract and fiduciary duties action. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Viswanathan was employed by the Clark County School District (CCSD) as a probationary teacher for the 2013-2014 school year. The terms of Viswanathan's employment were governed by a collective bargaining agreement (agreement) between CCSD and the Clark County Education Association, as well as Viswanathan's probationary employment contract. Pursuant to the agreement and Viswanathan's contract, a probationary teacher was only employed on an annual basis and had no right to employment after the last day of the relevant school year.

During the school year, Viswanathan's performance as a teacher was evaluated three times: on November 25, 2013; January 30, 2014; and April 1, 2014. Relevant to this matter, Viswanathan alleged that

respondent Louis Markouzis performed the third evaluation. On the second and third evaluations, Viswanathan's performance was determined to be not satisfactory and he was informed that he needed to improve his performance and that his teaching contract may not be renewed. Viswanathan was also provided with additional warnings concerning his performance deficiencies. Following those evaluations and warnings, respondent the Board of Trustees of the Clark County School District (the Board) declined to offer Viswanathan a new teaching contract for the following school year. The Board provided Viswanathan with written notice of its decision on April 28, 2014.

On May 28, 2014, Viswanathan filed a grievance concerning his performance evaluations and the Board's decision to decline to offer him a new teaching contract. Respondent Dr. Edward Goldman responded to Viswanathan's grievance, informing him that his attempt to grieve the performance evaluations was untimely pursuant to the agreement because the grievance was filed more than 30 days after those evaluations. Goldman also informed Viswanathan that the Board's decision to decline to offer him a new contract was not grievable or subject to a hearing as explained in the agreement.

Viswanathan later filed a complaint alleging the respondents were liable based on breach of contract, breach of implied covenant of good faith and fair dealing, and breach of fiduciary duties. Viswanathan alleged that the Board declined to renew his contract without providing the appropriate time to pursue a grievance concerning the evaluations and the decision not to renew his employment contract. In addition, Viswanathan alleged that Markouzis and Goldman were liable because their conduct violated his contractual rights.

The Board and Goldman moved to dismiss Viswanathan's complaint based on the statute of limitations. The district court dismissed Viswanathan's breach of fiduciary duties claims because they were not brought within three years as required by NRS 11.190(3)(d), but concluded that the statute of limitations did not bar Viswanathan's contract-based claims because he had pursued them in a timely manner considering the district court orders entering an administrative stay due to the COVID-19 pandemic.

Markouzis also moved to dismiss all claims against him. Markouzis contended that he merely performed an evaluation of Viswanathan's teaching performance and that the contract-based claims failed to state a claim for which relief could be granted because he was not a party to any contract with Viswanathan. Markouzis further contended that the claim of breach of fiduciary duties should be dismissed based on the statute of limitations. The district court subsequently granted Markouzis' motion to dismiss.

This matter was later set for an arbitration hearing on Viswanathan's remaining claims on July 28, 2021. However, the Board, Goldman, and Viswanathan filed motions for summary judgment on June 14, 2021. Viswanathan later withdrew his motion and moved to strike the motions for summary judgment filed by the Board and Goldman, asserting they were untimely pursuant to NAR 4(E). In addition, Viswanathan moved to strike declarations the Board and Goldman filed with their motions for summary judgment because he believed they had not been made based upon each individual declarant's personal knowledge. Viswanathan did not file oppositions to the motions for summary judgment.

The district court conducted a hearing concerning the motions for summary judgment and Viswanathan's motions to strike. The court considered the arguments of the parties, including Viswanathan's oral arguments in opposition to the motions for summary judgment, and subsequently entered a written order resolving those motions. The court found that the motions for summary judgment filed by the Board and Goldman were not untimely and denied Viswanathan's requests to strike them. The court also denied Viswanathan's motion to strike the declarations because the declarants attested that the information contained within them was accurate and that the declarations were based upon the personal knowledge of each declarant.

In addition, the district court determined that the Board and Goldman were entitled to summary judgment. The court concluded that the evidence demonstrated that the Board did not violate any contractual terms or the implied covenant of good faith and fair dealing such that there were no genuine disputes of fact as to those claims. The court also found that the evidence demonstrated that Viswanathan and Goldman did not have a contractual relationship, and thus, Goldman was also entitled to summary judgment in his favor on Viswanathan's breach of contract and breach of the implied covenant of good faith and fair dealing claims.

Viswanathan subsequently filed a motion to reconsider the summary judgment decision pursuant to NRCP 52(b) and NRCP 59(e). He contended that he had newly discovered information in the form of emails from Goldman's attorney and reiterated his contention that his underlying claims had merit. The court considered Viswanathan's motion and entered a written order denying relief. The court noted that Viswanathan failed to actually submit any new information with his motion and found that

Viswanathan failed to demonstrate that it should alter or amend its previous decisions. This appeal followed.

Viswanathan's request to strike the motions for summary judgment

First, Viswanathan argues that the district court abused its discretion by denying his motion to strike respondents' purportedly untimely motions for summary judgment. Where a matter has been submitted to court-annexed arbitration, dispositive motions must be brought at least 45 days before the arbitration date or the district court "may" foreclose the motion or impose sanctions. NAR 4(E). But in this case, the district court correctly noted that the dispositive motion deadline fell on a weekend and that respondents filed their motions for summary judgment on the following Monday, which was the first judicial day following the deadline. *See* NRCP 6(a)(1)(C) (explaining that if the last day of a period to complete some action "is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday"). Under these circumstances, we conclude that the court did not abuse its discretion by denying Viswanathan's motion to strike. *See Thomas v. Hardwick*, 126 Nev. 142, 152-53, 231 P.3d 1111, 1118 (2010) (reviewing a district court's denial of a motion to strike for an abuse of discretion).

Summary judgment

Second, Viswanathan argues that the district court erred by granting the Board's and Goldman's motions for summary judgment. Viswanathan argues that there were genuine disputes of material fact remaining such that the grant of summary judgment was improper. He also contends that the district court should have stricken the declarations the Board and Goldman filed in support of their motions because they did not

sufficiently state that they were made based upon the declarant's personal knowledge. We begin our examination of these issues with Viswanathan's challenge to the denial of his motion to strike.

"An affidavit or declaration used to support or oppose a [summary judgment] motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." NRCP 56(c)(4). "When affidavits are offered in support of a motion for summary judgment, they . . . must not only be made on the personal knowledge of the affiant, but must show that the affiant possesses the knowledge asserted." *Daugherty v. Wabash Life Ins. Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971); *see also* NRS 53.045 (explaining a properly executed unsworn declaration may be utilized in place of an affidavit).

In the challenged declarations, each declarant stated that the information contained within the declaration was based upon the declarant's personal knowledge, the declarant was able to testify competently concerning the information provided in the declaration, and the information contained within the declaration was accurate to the best of the declarant's personal knowledge. Thus, the challenged declarations contained sufficient information to permit their use in support of the motions for summary judgment. *See Daugherty*, 87 Nev. at 38, 482 P.2d at 818; NRS 53.045. Accordingly, we conclude that the district court properly denied Viswanathan's motion to strike.

Next, we review the district court's decision to grant the Board's and Goldman's motions for summary judgment. This court reviews a district court's order granting summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary

judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show there exists no genuine dispute of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact.” *Id.* at 603, 172 P.3d at 134.

Our de novo review of the district court’s grant of summary judgment establishes that Viswanathan is not entitled to relief. Here, the record demonstrates that there were no genuine disputes of material fact such that the Board and Goldman were entitled to judgment as a matter of law on Viswanathan’s breach of contract and breach of the implied covenant of good faith and fair dealing claims.

“To prevail on a claim for breach of contract, the plaintiff must establish (1) the existence of a valid contract, (2) that the plaintiff performed, (3) that the defendant breached, and (4) that the breach caused the plaintiff damages.” *Iliescu v. Reg’l Transp. Comm’n of Washoe Cty.*, 138 Nev., Adv. Op. 72, 522 P.3d 453, 458 (Ct. App. 2022). A party to a contract breaches the implied covenant of good faith and fair dealing where it performs “in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied.” *Hilton Hotels*

Corp. v. Butch Lewis Prods., Inc., 107 Nev. 226, 234, 808 P.2d 919, 923 (1991).

Here, Viswanathan's probationary teaching contract provided that his employment was subject to a collective bargaining agreement and NRS Chapter 391. As a probationary teacher, Viswanathan was to be evaluated three times during the relevant school year and provided with a description of the actions that were to be taken by CCSD's employees and Viswanathan to improve his performance. *See* 2013 Stat. Nev., ch. 496, § 4, at 3150-53 (former NRS 391.3125). And the evidence demonstrates that CCSD's employees performed the required evaluations and explained to Viswanathan the steps needed to improve his teaching performance. The evaluations also explained that he was not performing in a satisfactory manner, and that his current level of performance may result in a decision by the Board not to renew his contract. *See* 2013 Nev. Stat., ch. 496, § 6, at 3155 (former NRS 391.3128). As relevant here, the agreement provided that Viswanathan had to pursue a grievance concerning any evaluation within 30 days from the evaluation date, but the evidence presented to the district court demonstrated that Viswanathan failed to do so.

Moreover, Viswanathan's probationary teaching contract and the effective version of NRS Chapter 391 provided that Viswanathan had no right to employment after the last day of the relevant school year and that his performance evaluations were to be utilized in employment decisions. *See* 2013 Nev. Stat., ch. 496, § 4, at 3150-53 (former NRS 391.3125); 2013 Nev. Stat., ch. 496, § 8, at 3155-57 (former NRS 391.3197). And the agreement provided that the Board's decision not to renew Viswanathan's employment contract was not subject to a hearing or arbitration. Finally, the record demonstrates that Viswanathan received

notice of the Board's non-renewal decision prior to May 1, 2014, as required by NRS Chapter 391. *See* 2013 Nev. Stat., ch. 496, §8, at 3155-57 (former NRS 391.3197).

Viswanathan's breach of contract and breach of the implied covenant of good faith and fair dealing claims were predicated on his allegations that the Board declined to renew his contract without providing the appropriate time to pursue a grievance concerning the evaluations and the decision not to renew his employment contract. But as detailed above, the uncontroverted evidence demonstrates that the Board did not breach any provisions of the controlling contract, such that there was no genuine dispute of fact remaining as to Viswanathan's breach of contract claim. *See Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458. The record further demonstrates that there is no evidence that the Board was unfaithful to the purpose of Viswanathan's contract or his justified expectations, such that Viswanathan's breach of the implied covenant of good faith and fair dealing claim likewise failed as a matter of law. *See Hilton Hotels Corp.*, 107 Nev. at 234, 808 P.2d at 923. While Viswanathan made general arguments concerning the merits of the motions for summary judgment below, he did not submit evidence in support of his underlying claims, and his general allegations and conclusory statements were insufficient to create genuine disputes of material fact. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030-31.

We likewise conclude that the district court correctly determined that Goldman was entitled to summary judgment. Notably, Goldman was not a party to any contract with Viswanathan, and Viswanathan was thus unable to show that Goldman committed a breach of contract or a breach of the implied covenant of good faith and fair dealing. *See Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458; *Hilton Hotels Corp.*, 107

Nev. at 234, 808 P.2d at 923. Moreover, the district court also concluded that Goldman was entitled to judgment in his favor based upon discretionary-act immunity, and Viswanathan does not challenge the district court's decision on that point on appeal. *See Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1289 (Ct. App. 2022) (holding that when a district court provides independent and alternative grounds to support its ruling the appellant must properly challenge all of the grounds, otherwise the ruling will be affirmed).

Based on the forgoing analysis, we conclude that Viswanathan is not entitled to relief based on his challenges to the grant of summary judgment in favor of the Board and Goldman.

Louis Markouzis' motion to dismiss

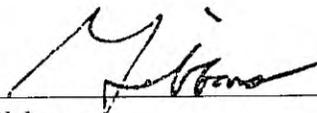
Third, Viswanathan argues that the district court erred by granting Louis Markouzis' motion to dismiss. An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint 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 his complaint, Viswanathan alleged that Markouzis conducted one of the relevant performance evaluations. But Viswanathan did not allege that he had a contractual relationship with Markouzis. Because Viswanathan's allegations did not establish the existence of a valid contract between himself and Markouzis, his allegations were insufficient

to state a claim based on breach of contract, *see Iliescu*, 138 Nev., Adv. Op. 72, 522 P.3d at 458, or breach of the implied covenant of good faith and fair dealing, *see Hilton Hotels Corp.*, 107 Nev. at 234, 808 P.2d at 923. Therefore, Viswanathan fails to demonstrate that the district court erred by granting Markouzis' motion to dismiss.¹

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Tenkasi Viswanathan
Clark County School District Office of The General Counsel
Olson, Cannon, Gormley, & Stoberski
Eighth District Court Clerk

¹Insofar as Viswanathan 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.

²The Honorable Deborah L. Westbrook did not participate in the decision in this matter.