

IN THE SUPREME COURT OF THE STATE OF NEVADA

Lisa Breslaw  
Appellant,

Supreme Court No 88336

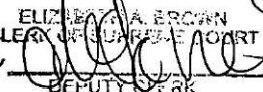
District Court No. A-23-865757-C

Vs.

Peter Cooper,  
Respondent

FILED

MAR 26 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

**APPELLANT'S INFORMAL BRIEF**

**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
03/15/2024	Order Granting Defendant's Motion to Dismiss The Complaint

**Notice of appeal.** Give the date you filed your notice of appeal in the district court:  
3/15/2024

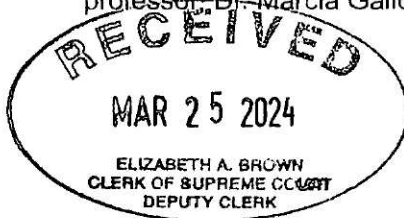
**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
A-21-837948-C	Breslaw vs. Cooper	Eighth Judicial District Court
84072	Breslaw vs. Cooper	Nevada Supreme Court
84072-COA	Breslaw vs. Cooper	Nevada Court of Appeals
A-23-865757-C	Breslaw vs. Cooper	Eighth Judicial District Court
86570	Breslaw vs. Cooper	Nevada Supreme Court
86570-COA	Breslaw vs. Cooper	Nevada Court of Appeals

**Pro Bono Counsel.** Would you be interested in having pro bono counsel assigned to represent you in this appeal? Yes.

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

In July of 2021, I filed my first (deficient) suit against Respondent Peter Cooper for a libelous post he published on r/Subredditdrama in Dec. of 2019, accusing me of stalking UNLV history professor Dr. Marcia Gallo. Respondent had been closely following my account between Oct.



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and Dec. of 2019, when I had, during a mental breakdown, made a series of Reddit posts regarding falling out with Dr. Gallo over a complaint I had filed against her over some communication issues. I also made some posts questioning my sexuality over her and described myself as being in a state of "limerence," which is an intense, debilitating romantic attraction to someone. Not only did Defendant link these posts in his libelous posts knowing that I had expressly named Dr. Gallo, but he had directed readers to read through my entire Reddit userpage. I deleted them immediately after learning of his post—that same day—but he then immediately retrieved them using Removeddit links and updated the post to let readers know that the links had been replaced with the Removveddit links.

Because I had named Dr. Gallo in my threads, people were able to contact UNLV, concerned about Dr. Gallo. This was confirmed by UNLV's former Assistant General, Debra Pieruschka, when I called her about a cease and desist letter she had sent me (for trying to retract the complaint). The cease and desist letter instructed me to direct all communications with UNLV to Debra and prohibited me from contacting anyone else at UNLV outside of the Gen. Counsel's Office. As such, I did not have reference letters from UNLV when I applied to UNR in February of 2021 for an MA in history and was rejected despite having a 3.93 GPA and 6 graduate-level history credits as an undergrad. Furthermore, I have no chance of ever furthering my education without recommendation letters from UNLV, as all graduate or professional programs require academic reference letters from upper division professors. However, as I stated in my posts, I wish to remain in NV. Aside from the damage to my education/career which resulted from Respondent's post, I was also humiliated by the fact that my Reddit posts, made during a mental breakdown over Dr. Gallo, were read by UNLV faculty, administrators, and legal counsel.

In my first complaint against Respondent (in 2021), believing that I had removed Dr. Gallo's name from the comments where I had copied and pasted email correspondences with her and UNLV, I had stated that I "had not mentioned my professor by name." Although I had tried to amend the complaint, that suit was dismissed for lack of personal jurisdiction. Also, Removeddit had stopped working by the time I filed my first suit, so the links to my threads were unavailable. However, while the case was pending appeal, I continued searching for ways to retrieve my old posts as well as for new posts about me. I had, in fact, come across another post where my old posts were linked using a then new archiving site, Unddit, and I was able to retrieve and screenshot a post where I expressly named Dr. Gallo. I had found another as well but lost the link earlier. (These archiving sites seem to be short-lived; now Unddit is disabled as well.)

The NV Court of Appeals had affirmed the district court's dismissal in that case but said that had either myself or Respondent mentioned UNLV or their faculty members by name, NV would have had jurisdiction over him. (See Court of Appeals Order in case 84072-COA). I then tried to present this evidence (and troll accounts naming Dr. Gallo) through a rule 60(b)(6) motion in Dept. 6, where the case was heard at that time, but Judge Jaqueline Bluth denied the motion. However, she kept the dismissal without prejudice, and after that order was served on February 10, 2023, I filed this instant suit on February 13, 2023, believing the statute of limitations would be equitably tolled given the circumstances. I spent the three intervening days between the order and the filing of this instant suit drafting the new complaint and preparing the exhibits etc.

This instant case was assigned to Dept. 9 and heard by Judge Maria Gall. Defendant again filed a motion to dismiss, arguing that the suit was untimely, that NV did not have jurisdiction because Defendant was served in Colorado, and that the matter was res judicata. While he mentioned that the NV Court of appeal had affirmed the previous dismissal for lack of jurisdiction, he did not address the new evidence (comments where I had mentioned Dr. Gallo) in the motion. Judge Gall granted the motion to dismiss on the grounds of untimeliness, but in her April 28, 2023, minute order she stated that to the extent that Defendant believed that jurisdiction was still improper, he failed to explain why. (See <sup>4p:1 4b</sup> May 28, 2023 minute order). I appealed that dismissal on the grounds that the case should have been equitably tolled and mentioned my mental health at the time of my Reddit postings as an extraordinary circumstance beyond my control, which prevented me from noticing that I typed Dr. Gallo's name. The Nevada Court of Appeals remanded the case back to the District Court for them to apply the Fausto analysis, including the extraordinary circumstances beyond my control. My diligence was never questioned and has even been acknowledged by multiple judges and Defendants' counsel.

Upon remand, however, Judge Gall again dismissed the suit as being untimely, applied the discovery rule analysis to a case requiring equitable tolling, and this time added lack of jurisdiction—after saying that she wouldn't and after saying that Defendant failed to explain why jurisdiction was still improper. She also incorporated material outside the pleadings to her decision while not converting the motion to dismiss to summary judgment. I believe she abused her discretion, and in the section below I will elaborate on my arguments.

**Statement of District Court Error. (Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)**

First, the district court was wrong to dismiss the case for lack of jurisdiction when it did not originally dismiss this case for this reason. Again, in her April 28, 2023 minute order, Judge Gall stated that "To the extent Defendant is of the position that the complaint in this matter is otherwise deficient in conferring personal jurisdiction over Defendant, Defendant has not explained why." The Court does not have to consider arguments either not cogently argued or not supported by legal authority *Edwards v. Emperor's Garden Rest*, 122 Nev. 317, 330 n.38 (Nev. 2006) Furthermore, at the Jan. 25, 2024 hearing on the Fausto analysis, Judge Gall said, when I pointed out that Defendant had not raised the jurisdictional argument earlier, "I agree. I'm not considering—the dismissal is not going to be based on whether or not there's personal jurisdiction." (January 25, 2024 transcript p. 10, emphasis added by me). She then went on to say, "I'm not particularly interested in why your first case was dismissed. That was dismissed for lack of jurisdiction. Not an issue here; right?" (Jan. 25, 2024 transcript, p. 13, emphasis added by me.)

The district court only has to show error, not abuse of discretion, in dismissing a case for lack of personal jurisdiction for it to be reversed by the Appellate Court. Here, both Defendant and the

court waived that defense—Defendant by not cogently arguing for it, and the Court by agreeing not to dismiss the case for lack of personal jurisdiction. Moreover, the NV Court of Appeals, in their order in case 84072 stated that had either Respondent or myself mentioned UNLV or Dr. Gallo in the post or comments themselves, NV would have had jurisdiction over Defendant. Again, Defendant linked threads where I had expressly mentioned Dr. Gallo by name, retrieved them after I deleted them, and then instructed readers to read through my entire userpage—knowing she was mentioned.

Next, the District Court abused its discretion when it again applied the discovery rule criteria , despite being instructed by the NV Court of Appeals to apply the Fausto analysis for equitable tolling. In her order, Judge Gall focuses on the timing of my discovering my general injury. She also argued that the comments mentioning Dr. Gallo changed only the magnitude and not the nature of my injury (although I maintain that I would not have received the cease and desist letter had Dr. Gallo's name not been linked in a post accusing me of stalking her). Regardless, however, discovery of the timing and nature of injury are considered when applying the discovery rule; they are not required in equitable tolling. "Under the *discovery rule*, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action." *Petersen v. Bruen*, 106 Nev. 271, 274 (Nev. 1990) (emphasis mine)

Equitable tolling, however, "permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim." *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990) This was also stated in *Perry vs. US Dept. of State*, citing *Smith Haynie vs. District of Columbia* 155F. 3d 575. Furthermore, "Tolling doctrines stop the statute of limitations from running *even if the accrual date has passed*." *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450 (7th Cir. 1990) (emphasis added by me)

A district court abuses its discretion when it incorrectly applies the law. (*Breslaw vs. Cooper* 2023 citing *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014)). The district court again incorrectly applied the law by applying the wrong legal standard (using discovery rule criteria), therefore abusing its discretion.

Judge Gall only needed to decide whether "extraordinary circumstances outside of Breslaw's control impacted her ability to file her claim within the statute of limitations." (*Breslaw vs. Cooper*, 2023) My first suit was lacking a critical component because of extraordinary circumstances. In my supplemental brief, I explained that my mental breakdown impaired my ability to concentrate and notice detail, and therefore I failed to notice that I forgot to remove Dr. Gallo's name from the email communications I shared on Reddit. (See Appellant's Supp. Brief p. 4 and Amended Supp Brief p 2) At the Jan. 25, 2024 hearing, Judge Gall never questioned my mental impairment at the relevant time or whether I was impaired enough for tolling the statute of limitations. Her concern was that she thought there was a delay between the filing of my first and second suit, and I explained that I found the comments mentioning Dr. Gallo when the first case (A-21-837948-C) was pending appeal, and then I filed and had to wait for Judge Bluth's

ruling on the Rule 60(b)(6) motion. (See Jan. 25, 2024 transcript p. 13-14) Toward the end of the hearing, I even asked her if she needed clarification on anything I had said or needed more "proof regarding my mental state," and she did not ask for anything more. (Jan. 25, 2024 transcript p. 20)

Then, in her March 15, 2023 order, she applied the non compos mentis standard of "total incapacity" required in federal cases to the entire statutory period. Equitable tolling as it relates to 1190(4)(e) cases, however, focuses on excusable delay by the Plaintiff. " *Fausto v. Sanchez-Flores*, 482 P.3d 677, 681-82 (Nev. 2021) My delay in filing this second the suit was excusable given that I had to wait for the first appeal (84072) and Rule 60(b)(6) motion to conclude before filing this suit—which i did immediately after my Rule 60(b)(6) motion was denied. Judge Gall also did not consider that Removeddit had stopped working. Thus, even with diligence, which I've demonstrated, I could not have brought my second suit any sooner than I did. Thus, Judge Gall again applied the wrong legal standard (re: my mental health) and did not take the "flexible-totality-of the circumstances" approach required by the 9th circuit regarding equitable tolling.

Next, she considered matters outside of the pleadings without converting the motion to dismiss to one of summary judgment. While the cease and desist letter was part of the exhibits, Judge Gall considered two subsequent, unrelated lawsuits (filed in 2023) which were not mentioned in my complaint or relevant to this case ( a suit against my former employer and another against my former physician). According to NRCP Rule 12(d) if "matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one of summary judgment under rule 56. (NRCP Rule 12(d) ) Now there is a material dispute of fact regarding whether my mental health at the time of my Reddit postings rendered me impaired enough to toll the statute of limitations. Additionally, these suits are particularly irrelevant to this case given that they were filed *after* I had filed both the first and second suit against Peter Cooper and did not involve Dr. Gallo.

I also felt that Judge Gall showed Defendant's counsel preferential treatment in allowing him to file his opposition to my motion to file supplement materials past the deadline without leave of the Court or even offering an explanation for the delay, making my arguments technically unopposed. I ask the Court to consider this within the total context of this case, as it indicates prejudice and points to an abuse of discretion in the district court's granting Defendant's motion to dismiss.

For the reasons argued above, I would like the NV Supreme Court (or Court of Appeals) to remand the case back to the district court so it can continue.

### CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief upon all parties to the appeal as follows:

By mailing it by first-class mail with sufficient postage prepaid to the following addresses(list the names of all parties served)

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Dated this 22nd of March, 2024



/s/Lisa Breslaw

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