

V11. Index To Appendices

Decision of the Nevada Court of Appeals

Appendix A

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

¹Matthews 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

²Matthews’ 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).

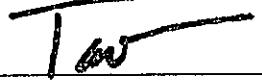
Because we conclude that the district did not err in dismissing Matthews’ complaint for lack of subject matter jurisdiction, we further conclude that the district court did not abuse its discretion in denying

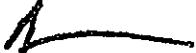
Matthews' post-judgment motion for relief from the dismissal order. *Ford v. Branch Banking & Tr. Co.*, 131 Nev. 526, 528, 353 P.3d 1200, 1202 (2015) (reviewing a district court's decision to deny an NRCP 60(b) motion for an abuse of discretion).³

Therefore, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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

³To 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)).

⁴Insofar 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.

Decision of the Nevada District Court

Appendix B

IN THE SUPREME COURT OF THE STATE OF NEVADA

HEATHER MATTHEWS,
Appellant,
vs.
CALIFORNIA STATE UNIVERSITY,
Respondent.

No. 79898

FILED

JAN 06 2020

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

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order dismissing a complaint. First Judicial District Court, Carson City; James E. Wilson, Judge.

Review of the notice of appeal and documents before this court reveals a jurisdictional defect. It appears that appellant filed a timely tolling motion on August 2, 2019. *See* NRAP 4(a)(4); *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010) (explaining when a post-judgment motion for reconsideration carries tolling effect). Appellant prematurely filed the notice of appeal after the filing of the tolling motion and before that motion was formally resolved. *See* NRAP 4(a)(6). To date, it appears the motion remains pending in the district court. Accordingly, this court lacks jurisdiction, *see id.* ("A premature notice of

appeal does not divest the district court of jurisdiction."), and
ORDERS this appeal DISMISSED.¹

Pickering, J.

Pickering

Parraguirre, J.

Parraguirre

Cadish, J.

Cadish

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

¹Appellant may file a new notice of appeal once the district court enters a written order resolving the August 2, 2019, motion.

The requests for relief made in appellant's pro se filings are denied.

ORIGINAL

1 Michael A. Burke, Esq. (SBN 11527)
2 Hannah E. Winston, Esq. (SBN 14520)
3 **ROBISON, SHARP, SULLIVAN & BRUST**
4 71 Washington Street
5 Reno, Nevada 89503
6 Telephone: (775) 329-3151

7 *Attorneys for Defendant*
8 *Board of Trustees of the California State University*

REC'D & FILED

2020 MAR 16 AM 11:57

AUDREY ROWLATT CLERK
BY *Dee* DEPUTY

7 **FIRST JUDICIAL DISTRICT COURT**
8 **CARSON CITY, STATE OF NEVADA**

9 HEATHER MATTHEWS, an individual, Case No.: 19TRT000371B

10 Plaintiff, Dept. No.: II

11 vs.

12 CALIFORNIA STATE UNIVERSITY, a
13 California Public Entity,

14 Defendant.

15 **ORDER DENYING PLAINTIFF'S TOLLING MOTION**

16 **[PROPOSED]**

17 On August 2, 2019, Plaintiff Heather Matthews ("Plaintiff") filed a motion requesting
18 this Court to "stay execution of judgment" and vacate this Court's Order dismissing the
19 Complaint filed against Defendant Board of Trustees of The California State University's
20 ("CSU"). On August 13, 2019, CSU filed an Opposition to Plaintiff's Motion to Vacate
21 Order. In her Motion, Plaintiff appears to seek to vacate this Court's Order on CSU's
22 Motion to Dismiss under the guise of NRCP 60. Plaintiff argues that she was deprived
23 an opportunity to be heard in this case. Plaintiff's position is flawed for several reasons.

24 First, Plaintiff had an opportunity to oppose CSU's Motion to Dismiss. In fact,
25 Plaintiff filed a late Opposition to CSU's Motion to Dismiss. Despite her Opposition
26 being late, it was still considered by the Court in response to the Motion; thus, Plaintiff
27 was heard on the issues. Secondly, there is no basis to "present your case" in
response to a Motion to Dismiss. CSU's Motion to Dismiss involved a pure legal issue

1 concerning CSU's 11th Amendment Sovereign Immunity and the recent U.S. Supreme
2 Court Ruling in *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485, 1493 (2019).
3 Third, Plaintiff's Request to Substitute a Judge was improper, and even if it was
4 intended to be a peremptory challenge, it was brought after a ruling on the case had
5 been handed down by this Court; thus, it was untimely. See SCR 48.1.

6 Additionally, while the instant Motion cites no law, the contemporaneously filed
7 Declaration of Plaintiff does reference NRCP 60. As such, the Court is left to speculate
8 that Plaintiff's Motion was intended to be a NRCP 60 Motion to Vacate the Order.
9 NRCP 60(b) provides:

10 (b) Grounds for Relief From a Final Judgment, Order, or
11 Proceeding. On motion and just terms, the court may relieve
12 a party or its legal representative from a final judgment, order,
or proceeding for the following reasons:

13 (1) mistake, inadvertence, surprise, or excusable neglect;
14 (2) newly discovered evidence that, with reasonable diligence,
15 could not have been discovered in time to move for a new trial
under Rule 59(b);
16 (3) fraud (whether previously called intrinsic or extrinsic),
17 misrepresentation, or misconduct by an opposing party;
18 (4) the judgment is void;
19 (5) the judgment has been satisfied, released, or discharged;
it is based on an earlier judgment that has been reversed or
vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.

20 Plaintiff's Motion unequivocally fails under all subparts of NRCP 60(b). In fact,
21 Plaintiff's Motion does not even cite a basis under NRCP 60(b) that her Motion could, or
22 should, be granted. Plaintiff fails to identify any mistake, inadvertence, surprise,
23 excusable neglect, fraud, or newly discovered evidence which would warrant vacating
24 the Order. CSU was dismissed from the above-captioned case with prejudice pursuant
25 to a timely filed Motion to Dismiss.

26 Therefore, upon submission of the Tolling Motion to this Court, and good cause
27 appearing:

28 THE COURT FINDS: CSU's Motion to Dismiss was predicated on the purely legal

1 issue of Sovereign Immunity provided to an arm of the State of California which prevents
2 it from being sued in a Nevada State Court by a Nevada citizen.

3 THE COURT FURTHER FINDS: In response to the Motion to Dismiss, Plaintiff
4 filed an untimely Opposition which was still considered by this Court. Thus, Plaintiff had
5 a full opportunity to oppose CSU's position, and she did so. After full briefing, CSU's
6 Motion was granted.

7 THE COURT THEREFORE FINDS: There is no basis for granting relief under
8 NRCP 60(b).

9 Accordingly,

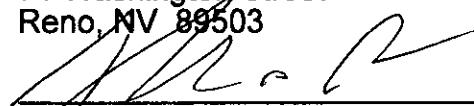
10 IT IS HEREBY ORDERED that Plaintiff's tolling motion, request to vacate order,
11 and request to stay execution of judgment, are DENIED.

12 IT IS SO ORDERED.

13 DATED this 13 day of March 2020.

14 
15 DISTRICT JUDGE

17 Submitted this 30 day of March 2020 by:

18 **ROBISON, SHARP, SULLIVAN & BRUST**
19 71 Washington Street
20 Reno, NV 89503


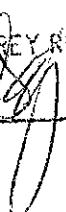
21 Michael A. Burke, Esq.
22 Hannah E. Winston, Esq.
23 Attorneys for Defendant Board of Trustees of
24 of the California State University
25
26
27
28

1 Michael A. Burke, Esq. (SBN 11527)
2 Hannah E. Winston, Esq. (SBN 14520)
3 **ROBISON, SHARP, SULLIVAN & BRUST**
4 71 Washington Street
5 Reno, Nevada 89503
6 Telephone: (775) 329-3151

REC'D & FILED

2020 APR 23 PM 5:52

AUBREY ROWLATT
CLERK

BY  DEPUTY

7 *Attorneys for Defendant*
8 *Board of Trustees of the California State University*

6 **FIRST JUDICIAL DISTRICT COURT**

7 **CARSON CITY, STATE OF NEVADA**

8 HEATHER MATTHEWS, an individual, Case No.: 19TRT000371B

9 Plaintiff, Dept. No.: II

10 vs.

11 CALIFORNIA STATE UNIVERSITY, a
12 California Public Entity,

13 Defendant.

14 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

15 ~~— [PROPOSED]~~

16 On March 20, 2020, Plaintiff Heather Matthews ("Plaintiff") filed a motion
17 requesting this Court to reconsider its March 16, 2020 Order Denying Plaintiff's Motion to
18 "Stay Execution of Judgment" concerning the dismissal of the Complaint filed against
19 Defendant Board of Trustees of The California State University's ("CSU").¹ On March 27,
20 2020, CSU filed an Opposition to Plaintiff's Motion for Reconsideration. In her Motion for
21 Reconsideration, rather than seek reconsideration of the Order Denying Plaintiff's Tolling
22 Motion, Plaintiff appears to seek to vacate this Court's Order on CSU's Motion to Dismiss.
23 In this regard, Plaintiff argues that she was deprived an opportunity to be heard in this
24 case.

25 Upon review of all briefs submitted in support and opposition to Plaintiff's Motion
26 for Reconsideration, Plaintiff has failed in any way to present any new facts or laws which

27
28 ¹ Plaintiff's Motion for Reconsideration Refers to the "Stay of Execution of Judgment" Motion as her
"Tolling Motion."

1 would warrant this Court reconsidering its March 16, 2020 Order Denying Plaintiff's
2 Tolling Motion. Rather, Plaintiff impermissibly has used the filing of a Motion for
3 Reconsideration as a basis to revisit this Court's Order Dismissing CSU with Prejudice.
4 CSU's Motion to Dismiss involved a pure legal issue concerning CSU's 11th Amendment
5 Sovereign Immunity and the recent U.S. Supreme Court Ruling in *Franchise Tax Bd. of*
6 *California v. Hyatt*, 139 S. Ct. 1485, 1493 (2019). This Court will not, and does not,
7 entertain Plaintiff's attempts to reargue an Order granting CSU's Motion to Dismiss which
8 was issued over eight (8) months ago.

9 Therefore, upon submission of Plaintiff's Motion for Reconsideration to this Court,
10 and good cause appearing:

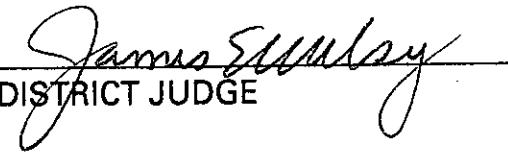
11 THE COURT FINDS: Plaintiff has impermissibly used the instant Motion for
12 Reconsideration as an attempt to reargue the July 24, 2019 Order Granting CSU's Motion
13 to Dismiss. CSU's Motion to Dismiss was predicated on the purely legal issue of
14 Sovereign Immunity provided to an arm of the State of California which prevents it from
15 being sued in a Nevada State Court by a Nevada citizen.

16 THE COURT FURTHER FINDS: Plaintiff has presented no new law or facts upon
17 which relief could, or should, be given in reconsideration of this Court's Order Denying
18 Plaintiff's Tolling Motion.

19 Accordingly,

20 IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is DENIED.

21 DATED this 23day of April 2020.

22 
23 DISTRICT JUDGE
24

25 Submitted this 27th day of March 2020 by:
26 **ROBISON, SHARP, SULLIVAN & BRUST**

27 71 Washington Street
28 Reno, NV 89503

/s/ Michael A. Burke

Michael A. Burke, Esq.

Hannah E. Winston, Esq.

29 Attorneys for Defendant Board of Trustees of the California State University

Decision of the Nevada Supreme Court Denying Review

Appendix C

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 81120

FILED

JUL 06, 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Office*
DEPUTY CLERK

ORDER DENYING PETITION FOR REVIEW

Review denied. NRAP 40B.

It is so ORDERED.¹

Hardesty, C.J.

Hardesty

Parraguirre, J.

Parraguirre

Stiglich, J.

Stiglich

Cadish, J.

Cadish

Silver, J.

Silver

Pickering, J.

Pickering

Herndon, J.

Herndon

¹ In light of this order, no action will be taken on the letter filed by the appellant on June 28, 2021.

Order of Nevada Supreme Court Denying Rehearing

Appendix D

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 81120

FILED

JUL 26 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY CHIEF DEPUTY CLERK

ORDER DENYING MOTION

On April 16, 2021, the Court of Appeals entered an order of affirmance in this appeal. The Court of Appeals subsequently denied rehearing. On July 6, 2021, this court denied appellant's petition for review and the remittitur issued on that same date. *See* NRAP 41(b)(2) (the clerk of this court shall issue the remittitur upon issuance of an order denying a petition for review). Appellant has now filed a motion asking this court to reinstate her appeal. The motion is construed as a motion to recall the remittitur and reinstate this appeal.

Appellant argues that her appeal should be reinstated because her case was not presented to this court in its entirety. Specifically, appellant asserts a clerk in this office intentionally removed page 10 from her petition for review filed on June 25, 2021, and therefore, this court did not consider or address the claims she raised on that page. On June 28, 2021, appellant filed a letter in which she made a similar assertion regarding a missing page 10. The letter included a copy of the page 10 appellant asserts was intentionally removed from her petition for review.

Appellant's assertion that her case was not presented to this court in its entirety has no merit. Page 10 was included in the petition for review that was filed in this court on June 25, 2021, and it is identical to

the page 10 appellant included in her June 28, 2021, letter.¹ Accordingly, the motion to recall the remittitur and reinstate this appeal is denied.

It is so ORDERED.

Hardesty, C.J.
Hardesty

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

¹An identical page 10 was also included in the petition for rehearing that was filed in the Court of Appeals on April 26, 2021.

**Additional material
from this filing is
available in the
Clerk's Office.**