

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 30 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

GUANGYU WANG,

Plaintiff-Appellant,

v.

NEVADA SYSTEM OF HIGHER  
EDUCATION,

Defendant-Appellee.

No. 21-15981

D.C. No.

3:18-cv-00075-MMD-CLB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Miranda M. Du, Chief District Judge, Presiding

Argued and Submitted November 17, 2022  
San Francisco, California

Before: LINN,\* RAWLINSON, and HURWITZ, Circuit Judges.

Dr. Guangyu Wang appeals a judgment of the district court in favor of the Nevada System of Higher Education (“NSHE”) in this action asserting violations of Title VII of the Civil Rights Act of 1964 and Nevada law. He also challenges the

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

district court's award of costs to NSHE. We review the district court's grant of summary judgment de novo, *Prison Legal News v. Lehman*, 397 F.3d 692, 698 (9th Cir. 2005), and its evidentiary rulings for abuse of discretion, *Obrey v. Johnson*, 400 F.3d 691, 694 (9th Cir. 2005). We may reverse an award of costs if we find that the award would cause "severe injustice." See *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003). We affirm the judgment in favor of NSHE but reverse the costs award.

1. Wang argues that the district court misconstrued his operative complaint as simply alleging five discrete acts of retaliation, as opposed to hostile work environment or breach of contract. We disagree. A plain reading of the operative complaint shows that Wang alleged separate claims arising from specific distinct acts, see *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113–15 (2002), and the record developed at summary judgment and trial contains no evidence to support a hostile work environment claim. Wang's operative complaint also fails to allege breach of contract.

2. The district court did not err in granting summary judgment on the first four claims of retaliation.

a. Although the court granted Wang partial summary judgment as to liability on the first two claims, it correctly held that Wang failed to establish damages from either retaliatory act. Because Wang did not seek nominal damages below, he has

waived any such claim on appeal. *See Fitzgerald v. Century Park, Inc.*, 642 F.2d 356, 359 (9th Cir. 1981).

b. The district court correctly held that undisputed evidence showed that the prior settlement amount of \$21,589.02 was paid by the State of Nevada and not from Wang's grant.

c. The district court also correctly held that NSHE had no duty to preserve lab supplies purchased with university funds and that the university's obligations under a prior settlement agreement extended only to two equipment items unrelated to the lab supplies, obligations that NSHE satisfied.

3. The district court did not abuse its discretion by excluding evidence relating to the first four claims from the jury trial on the fifth claim. That evidence was not directly related to the issue at trial, which was whether NSHE retaliated against Wang by prohibiting his access to the lab several months after his employment was terminated. *See Sprint/United Mgmt Co. v. Mendelsohn*, 552 U.S. 379, 382–85 (2008) (noting that district courts have broad discretion to determine what evidence is relevant or when relevant evidence should be excluded). In any event, Wang suffered no prejudice from exclusion of the evidence, *see Obrey*, 400 F.3d at 701, as he failed to show any damage from denial of access to the lab given that the supplies related to his claims had already been discarded.

4. Because of the grossly different financial positions of the parties and Wang's partial success in establishing two acts of retaliation, we find that awarding costs to NSHE would cause severe injustice. The award of costs is therefore reversed.

**AFFIRMED IN PART AND REVERSED IN PART.** Each party shall bear its own costs on appeal.