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Summary of Winn v. Sunrise Hospital and Medical Center, 128 Nev. Adv. Op. 23

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TORT LAW – MEDICAL MALPRACTICE

Summary

Appeal from a district court summary judgment in a medical malpractice action based on the statute of limitations under NRS 41A.097.

Disposition/Outcome

The accrual date for NRS 41A.097(2)'s one-year discovery period usually presents a question of fact for a jury. However, when there is irrefutable evidence that a plaintiff was put on inquiry notice of an injury, the district court should determine the discovery date as a matter of law.

For the NRS 41A.097(3) tolling provisions to apply, a plaintiff must establish (1) that the opposing party intentionally withheld information and (2) that the withholding objectively hindered a reasonably diligent plaintiff from timely filing suit.

One defendant's concealment cannot serve as a basis for tolling NRS 41A.097(2)'s statutory limitations periods as to defendants who played no role in the concealment.

Factual and Procedural History

On December 14, 2006, 13-year-old Sedona Winn underwent heart surgery at respondent Sunrise Hospital and Medical Center (Sunrise). Respondent Michael Ciccolo, M.D., performed the surgery, and respondents Robert Twells, CCP, and Lee Steffen, CCP, were the perfusionists tasked with maintaining Sedona's blood flow during the surgery (collectively, the doctors).

The day after the surgery, Sedona's father was notified that she had suffered an "extensive brain injury" during the operation. The doctors were unable to give an explanation for the injury.

Winn, acting as guardian ad litem for Sedona, hired an attorney to represent him in a medical malpractice action against Sunrise and the doctors. In mid-January 2007, Winn's attorney sent a letter to Sunrise requesting "all patient records" relating to the surgery. Three days later Winn's attorney sent a second records request pursuant to a Social Security Disability benefits claim.

¹ By Travis Akin

On February 14, 2007, Sunrise provided Winn's attorney with 182 pages of records, including Dr. Ciccolo's postoperative report from December 16, 2006. A medical expert for Winn would later produce an affidavit noting that the postoperative report indicated that a "notable volume of air" was present in Sedona's left ventricle at "inappropriate times during the procedure."

Although the 182 pages of records sufficed to pursue the Social Security claim, Sunrise did not provide Winn's attorneys with additional records until December 2007. Winn's attorney did not receive a complete set of records, which included a post-surgery MRI and CT scan, until February 12, 2008.

Using the complete set of records, Winn's attorney procured an affidavit from a medical expert that opined that Sunrise and the doctors had negligently caused Sedona's injuries. The expert primarily relied on the postoperative report that Sunrise provided on February 14, 2007. Armed with the expert affidavit, Winn filed suit against Sunrise and the doctors on February 3, 2009.

Each respondent moved to dismiss Winn's complaint by claiming it was time-barred by NRS 41A.097(2). Each contended that more than a year had elapsed between Winn discovering the injury and filing suit. The district court concluded that Winn discovered the injury on December 15, 2006 (the day after the surgery) and granted respondents' motions. This appeal followed.

Discussion

Justice Parraguirre wrote the unanimous en banc opinion for the Court. After explaining NRS 41A.097's general framework,² the Court identified the three disputed issues. First, the parties disagreed on when Winn discovered the injury and, therefore, triggered the one-year discovery period. Second, Winn and Sunrise disputed subsection 3's use of the term "concealed." Finally, Winn and the doctors disagreed on whether Sunrise's alleged concealment could serve as a basis for tolling the one-year discovery period as to the doctors.

² Nev. Rev. Stat. 41A.097 states that:

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first...
3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.

NRS 41A.097(2)'s discovery date may be determined as a matter of law only when the evidence irrefutably demonstrates that a plaintiff has been put on inquiry notice.

A plaintiff discovers his injury “when he knows or, through the use of reasonable diligence, should have known of the facts that would put a reasonable person on inquiry notice of his cause of action.”³ A person is put on inquiry notice when he should have known facts that “would lead an ordinarily prudent person to investigate the matter further.”⁴

The district court’s conclusion that Winn discovered Sedona’s injury on December 15, 2006 as a matter of law, was improper because the accrual date for a statute of limitations is a question of law only when the facts are uncontroverted.⁵ The record was unclear as to what respondents conveyed to Winn immediately after the surgery. Also, it is unlikely that an ordinarily prudent person would begin an investigation on the same day he was informed of a major problem in his child’s surgery. Because the evidence did not irrefutably demonstrate that Winn discovered the injury on December 15, 2006, the district court erred in determining that, as a matter of law, the one-year discovery period accrued on this date. Instead, the Court held that evidence irrefutably demonstrates that Winn discovered Sedona’s injury no later than February 14, 2007 – the date when he received the initial 182 pages of records.

Factual issues remain as to whether subsection 2’s one-year discovery period should have been tolled due to Sunrise’s alleged concealment of records.

Winn argued that his February 3 2009, lawsuit was timely because the one-year discovery period was tolled for concealment until the complete set of records was provided on February 12, 2008. Winn claimed the complete records were needed to secure the expert affidavit, and Sunrise denied that it “concealed” the records. The Court concluded that factual issues remain as to whether the one-year discovery period should have been tolled.

The Court found that subsection 3’s tolling provisions apply when the two elements of concealment are present: (1) an intentional act by one party that (2) prevents or hinders the other party from learning something. In addition to the concealment element, plaintiff must also show that the information withheld objectively hindered a reasonably diligent plaintiff from timely filing suit. Accordingly, in order to toll the discovery period, Winn must establish: (1) that Sunrise intentionally withheld information, and (2) that this withholding would have hindered a reasonably diligent plaintiff from procuring an expert affidavit. After finding that issues of fact remained on these two elements, the Court vacated

³ Massey v. Litton, 99 Nev. 723, 728, 669 P. 2d. 248, 252 (1983)

⁴ Black’s Law Dictionary 1165 (9th ed. 2009)

⁵ Day v. Zubel, 112 Nev. 972, 977, 922 P.2d. 536, 539 (1996)

the district court's summary judgment in favor of Sunrise and remanded to give Winn the opportunity to satisfy the two prong test.

One defendant's concealment cannot toll the statute of limitations as to a second defendant who played no role in the concealment.

Winn argued that the one-year discovery period was tolled as to all respondents because of Sunrise's alleged concealment. The doctors claimed that tolling was inappropriate because they had not been accused of concealing anything. The Court agreed with the doctors, relying on the defendant-specific language of subsection 3 and public-policies behind the statute of limitations to hold that the tolling provision applied only to the defendant responsible for the concealment. Since Winn's allegation of concealment was directed only at Sunrise, he could not rely on subsection 3 as a basis for tolling subsection 2's one-year discovery period as to the doctors. The Court affirmed the district court's summary judgment in favor of the doctors.

Conclusion

Affirmed in part, vacated in part, and remanded with instructions.

First, the Court found that questions of fact remained as to whether the one-year discovery period was tolled because of concealment against respondent Sunrise Hospital and Medical Center. Therefore, the Court vacated the district court's summary judgment on this issue and remanded for further proceedings.

Second, the Court found that the tolling-for-concealment provision did not apply against the other respondents, and affirmed the district court's summary judgment in their favor.