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Summary of Wheble v. Dist. Ct., 128 Nev. Adv. Op. No. 11

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MEDICAL MALPRACTICE - STATUTE OF LIMITATIONS

Summary

The Court considered a petition for writ of mandamus challenging district court order denying petitioner's/defendant's motion to dismiss and for summary judgment in a medical malpractice matter.

Disposition/Outcome

The Court reversed the district court's denial of defendant's motion to dismiss because NRS 11.500(1) cannot be used to refile a claim previously dismissed for failure to comply with NRS 41A.071 after the statute of limitations expired.

Factual and Procedural History

On November 22, 2006, Robert Ansara, Special Administrator of the Estate of Andrew Pedretti ("Plaintiff"), filed a complaint in district court against Pedretti's physician and physician's assistant ("Saxena defendants" and "Wheble defendants" respectively) for medical negligence, wrongful death, and statutory abuse and neglect occurring while Pedretti was a patient at the Desert Lane Care Center. As required by NRS 41A.071, the complaint referenced an expert affidavit, but none was attached. On November 27, 2006, Plaintiff filed an errata to the complaint which attached the expert affidavit.

On July 20, 2009, the defendants moved for summary judgment, arguing that Plaintiff failed to attach expert affidavit to initial complaint rendered the entire complaint *void ab initio* as to medical malpractice claims under *Washoe Medical Center v. District Court*.² The district court denied summary judgment, prompting the defendants to file a petition for writ of mandamus in the Supreme Court of Nevada. The Court granted defendant's petition and found that district court abused its discretion by not granting summary judgment because it was required to dismiss the medical malpractice claims without prejudice due to Plaintiff's failure to attach the expert affidavit.

On January 21, 2010, Plaintiffs filed a new complaint reasserting the dismissed medical malpractice claims, and the district court consolidated the cases. The Saxena defendants filed a motion to dismiss because the statute of limitations had expired before this complaint was filed. The Saxena defendants further argued that a claim cannot be refiled after the statute of limitations expires under the saving clause in NRS 11.500. The district court denied the motion. The Wheble defendants then filed a motion for summary judgment, asking the district court to find NRS 11.500 unconstitutional, which the district court also denied. The Wheble defendants then filed this writ for mandamus relief.

¹ By Bryan Schwartz

² 122 Nev. 1298, 148 P.3d 790 (2006).

Discussion

The Court began its opinion by noting that the writ involved an issue of first impression: whether medical malpractice claims previously dismissed for failure to comply with NRS 41A.071 can be refiled under NRS 11.500 after the expiration of the statute of limitations. The Court reviews statutory interpretation questions de novo, even in regards to a writ petition.³ If a statute is clear, the Court will not look beyond the statute's plain language.⁴

Plaintiff argued that when the Court's January 8, 2010, order directed the district court to dismiss Plaintiff's medical malpractice claim without prejudice, the plain language of NRS 11.500(1) allowed them to refile within 90 days of dismissal, even though statute of limitations had passed. However, the plain language of the statute states that an action must have been "commenced" in order for it to be refiled under NRS 11.500(1) after statute of limitations passed. NRCP 3 provides that a civil action has "commenced" when a complaint is filed with the court. A medical malpractice complaint filed without a supporting medical expert affidavit is *void ab initio*, meaning it is of no force and effect. Thus, the complaint does not legally exist.⁵

Here, Plaintiff's complaint was dismissed for failure to comply with NRS 41A.071's requirement to attach a supporting medical expert affidavit, and consequently never legally existed. Since the complaint never existed, an action was never commenced. Therefore, NRS 11.500(1) does not apply, and the district court must dismiss the Plaintiff's January 21, 2010, complaint since it was brought after the statute of limitations had expired.

Conclusion

If a medical malpractice claim is dismissed for failure to comply with NRS 41A.071, NRS 11.500(1) cannot be used to refile the same claims once the statute of limitations has expired. Thus, the district court was required to dismiss Plaintiff's January 21, 2010, complaint, which was previously dismissed for failure to comply with NRS 41A.071 because the statute of limitations had expired.

³ Int'l Gave Tech. v. Dist. Ct., 124 Nev. 193, 198, 179 P.3d 556, 559 (2008).

⁴ Beazer Homes Nev. Inc. v. Dist. Ct., 120 Nev. 575, 579-80, 97 P.3d 1132, 1135 (2004).

⁵ Washoe Med. Ctr., 122 Nev. at 1304, 148 P.3d at 794.