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## Summary of Renown Reg'l Med. V. Second Jud. Dist. Ct., 130 Nev. Adv. Op. 80

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PROCEDURAL LAW: SUMMARY JUDGMENT SUA SPONTE

**Summary**

The Court determined that before a court may grant summary judgment sua sponte, the defending party must be given notice and an opportunity to defend itself.

**Background**

Michael Wiley was treated at Renown Regional Medical Center after he was injured from an accident, which he was not at fault. Renown did not bill Wiley's health insurance, Cigna, for his treatment and instead recorded a hospital lien against his potential tort recovery. Cigna sent payment to Renown, but Renown did not accept this payment because it believed Cigna did not in fact cover injuries caused by a third party's negligence. Subsequently, the tortfeasor's insurer settled with Wiley and sent him one check to him and another check made out to Renown, but Wiley refused to give Renown their check. Consequently, Renown did not release its lien and Wiley was later refused a loan due to the outstanding lien.

Wiley brought a putative class action against Renown, alleging Renown's lien violated Nevada's hospital lien statutes<sup>2</sup>, that Renown breached its provider agreement with Cigna, and that Renown intentionally interfered with Wiley's policy with Cigna. Renown moved for summary judgment, stating Cigna did not cover Wiley's treatments, Wiley could not assert breach of the provider agreement because he was not a third-party beneficiary, and that Renown did not violate Nevada's hospital lien statutes.<sup>3</sup> The district court initially denied the motion and then granted Renown's request for a status conference. However, the full merits of Wiley's contract claims were not at issue in the summary judgment proceedings.

Renown filed a second motion for summary judgment, alleging the same claims as their first motion. Wiley also filed a motion for summary judgment. The district court held a hearing on the summary judgment motions and denied Renown's motion, but granted Wiley's motion. The court found, among other things, in favor of Wiley's contract claims, even though the full merits of these claims were not argued in either the cross-motions for summary judgment or at the hearing. Renown then challenged the district court's order by filing a petition for mandamus relief.

**Discussion**

The availability of appeal after final judgment is generally considered an adequate and speedy remedy and therefore precludes mandamus relief from partial summary judgment orders. However, the court decided to exercise its discretion to consider the petition for a writ of mandamus relief because an important area of law needed clarification and judicial economy is served by considering the writ petition.

The district court granted partial summary judgment in Wiley's favor on his contract claims, but these claims were not mentioned anywhere in the six summary judgment briefs. Nor were these contract claims argued in the hearing.

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<sup>1</sup> By Leesa Goodwin

<sup>2</sup> NEV. REV. STAT. § 108.590 (1999); § 449.757 (2011).

<sup>3</sup> *Id.*

The district court, without briefing, argument, or even notice, erred when it granted summary judgment in favor of Wiley on his contract claims. This is the type of sua sponē summary judgment that this Court and federal courts have disapproved.

**Conclusion**

The Court granted Renown's petition in part and ordered the clerk to issue a writ of mandamus directing the district court to vacate the portion of its order granting summary judgment to Wiley on his contract claims. The Court denied the remainder of Renown's petition because the other issues were not considered.