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Marcus A. Reif v. Aries Consultants, Inc., 135 Nev. Adv. Op. 51 (Oct. 10, 2019)

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NRS 11.258 INITIAL PLEADING REQUIREMENTS

Summary

The Court determined that, under NRS 11.258(1), a complaint is only void if it is *served* without a concurrent filing of attorney affidavit and expert report.

Background

Appellant Marcus Reif was injured when his vehicle went through the wall of a parking garage and dropped five stories. Reif filed a complaint against the company that inspected the wall, Respondent Aries Consulting, Inc., alleging negligence, negligence per se, and negligent performance of an undertaking.

Reif did not file an attorney affidavit and expert report along with his original complaint. However, the day after filing his original complaint, he filed an “Amended Complaint” identical to the original with required affidavit and expert report. Reif served the amended complaint.

Aries moved to dismiss the complaint for two reasons: 1) Reif continued an identical cause of action in another court and 2) the complaint did not comply with NRS 11.258 because the attorney that signed the affidavit was not licensed in Nevada or admitted for the instant litigation.

The district court granted the motion to dismiss for Reif’s failure to file the original complaint with the required affidavit and expert report.

Discussion

The issue before the court is whether the district court erred in finding that Reif failed to meet the requirements of NRS 11.258. The Court reviews statutes that are clear and unambiguous by giving “effect to the plain and ordinary meaning of the words.”² Actions against design professionals regarding nonresidential construction require the attorney for the complainant to file an affidavit and expert report with the court concurrently with the service of the complaint.³ If these requirements are not met, the action will be dismissed.⁴

Conclusion

The district court relied upon a Nevada Supreme Court ruling that incorrectly required a pleading filed under NRS 11.258 be void immediately if it was filed without the required affidavit and expert report.⁵ The plain language of NRS 11.258 clearly states that the complaint must be *served*

¹ Joseph Adamiak.

² *Cromer v. Wilson*, 225 P. 3d 788, 790 (2010).

³ NEV. REV. STAT. 11.258 (1) and (3) (2007).

⁴ NEV. REV. STAT. 11.259 (2007).

⁵ *Otak Nevada, LLC v. Eight Judicial District Court*, 260 P. 3d 408, 412 (2011).

in order to prompt NRS 11.258 requirement for concurrent filing of the affidavit and expert report. The Court reversed the district court's order granting Aries' motion to dismiss.