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### Harper v. Copperpoint Mut. Ins. Holding Co., 138 Nev. Adv. Op. 33 (May 5, 2022)

Servando Martinez

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**MEDICAL MALPRACTICE: APPLICABILITY OF NRS 42.021 IN SETTLEMENT  
MATTERS**

**Summary**

In an opinion drafted by Justice Herndon, the Court considered whether NRS 42.021(2)'s prohibition on a collateral source provider's right to recover extends to a medical malpractice case that was settled before proceeding to trial. Harper alleged that construing the statute's plain language would produce an absurd result and that the statute should be interpreted similarly to the California Civil Code the statute was based on. The district court dismissed Harper's argument, rationalizing that the statute prohibits a payer of collateral source benefits from seeking reimbursement from a medical malpractice plaintiff only when the defendant introduces evidence of those payments. Similarly, the Court reasoned that the plain language analysis is applicable and that it did not make sense to adopt the California Civil Code's interpretation, affirming the district court's decision in its entirety.

**Facts and Procedural History**

This opinion comes from an appeal from an Eighth Judicial District Court order denying appellant's request for a declaration that NRS 42.021 precluded respondent from recovering its workers' compensation payments from appellant's medical malpractice settlement proceeds. In 2014, Harper sustained a work-related injury in Arizona and the Copperpoint Mutual Insurance Company provided coverage for Harper's injury, including a medical treatment where Harper underwent a procedure in Las Vegas in 2015 where Harper suffered an additional injury that resulted in Harper's quadriplegia, pain, suffering and emotional distress. In 2016, Harper filed a

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<sup>1</sup> By Servando Martinez.

medical malpractice action in Nevada against the doctors and hospital, but when Copperpoint became aware of the medical malpractice suit, they asserted that they were entitled to a lien against Harper's potential recovery damages pursuant to an Arizona statute.<sup>2</sup> Because Copperpoint had settled the medical malpractice action for roughly \$6 million, Harper's counsel asserted that, under NRS 42.021(2), Copperpoint was prohibited from seeking reimbursement. Copperpoint responded by suspending Harper's workers' compensation coverage until she reimbursed Copperpoint for \$3 million. Harper then brought this suit, asserting claims for injunctive and declaratory relief. The district court denied Harper's motion for partial summary judgment asserting that the Nevada statute prohibited Copperpoint from requesting a lien against her settlement proceeds, concluding that NRS 42.021's plain language applied only to actions where third-party payments were introduced into evidence and did not apply to cases that settled before trial. However, the district court failed to address whether NRS 42.021 should apply instead of the Arizona statute or whether it lacked subject matter jurisdiction over the matter.<sup>3</sup> Harper then filed this appeal.

## **Discussion**

### ***The district court had subject matter jurisdiction over Harper's claims for declaratory and injunctive relief***

Copperpoint argued that the district court lacks subject matter jurisdiction, stating that continued workers' compensation benefits must be pursued through Arizona's system, which provides that "the right to recover compensation for injuries sustained by an employee...is the exclusive remedy against the...employer's workers' compensation insurance carrier."<sup>4</sup> Copperpoint asserted that Harper already filed a claim in Arizona's appellate court system, but Harper

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<sup>2</sup> ARIZ. REV. STAT. § 23-1023.

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

<sup>4</sup> ARIZ. REV. STAT. ANN. § 23-1022(A) (1984).

contended that she is not seeking continued benefits, but is asking that Copperpoint cannot assert a lien against her medical malpractice settlement proceeds under Nevada law. The Court then detailed that Harper is seeking a judicial declaration that Copperpoint is prohibited from seeking reimbursement from her medical malpractice settlement proceeds and that the district court did in fact have subject matter jurisdiction over the matter. Citing *Kress*<sup>5</sup> and the Uniform Declaratory Judgments Act,<sup>6</sup> the Court concluded that a justiciable controversy existed between Harper and Copperpoint that was appropriately brought as a declaratory relief action.

***By its plain language, NRS 42.021 does not prohibit a collateral source provider from seeking reimbursement from medical malpractice proceeds when the medical malpractice action is settled before trial***

The Court then discussed whether NRS 42.021 applies to settlements in addition to trials. The parties conflict on subsection 2 of the statute, which states that a source of collateral benefits may not recover any amount against the plaintiff or be subrogated to the rights of the plaintiff against a defendant.<sup>7</sup> Harper contends that (1) construing the statute by its plain language would produce an absurd result and (2) that the statute should be construed consistent with the way the California Court of Appeal has construed California Civil Code 3333.1.

***Construing NRS 42.021 by its plain language would not produce an absurd result***

The Court relied on NRS 42.021(1), which permits a defendant in a medical malpractice action to “introduce evidence of third-party payments, which, by definition, limits the statutes applicability to trials.”<sup>8</sup> The Court detailed that the application of this

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<sup>5</sup> *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948).

<sup>6</sup> NEV. REV. STAT. § 30.030 (providing that “courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”)

<sup>7</sup> § 42.021.

<sup>8</sup> *Id.*

statute makes sense in the context of the a trial, but not in the context of a settlement where a plaintiff and defendant are involved in an agreement with a third-party provider who was not involved in the initial negotiations. Here, the Court rationalized that the statute’s intent coincides with its purpose of preventing a plaintiff from “double dipping.”

***We decline to construe NRS 42.021 consistently with how the California Court of Appeal has construed its statutory analog***

The Court acknowledged Harper’s argument, based on *Graham*, that “blind obedience” to the statute’s plain language would defeat the Legislature’s purpose of enacting the California code, which was an initiative to reduce the cost of medical malpractice insurance and litigations.<sup>9</sup> The Court then reaffirmed that the Nevada statute is plain and unambiguous and does not need to be “construed.”<sup>10</sup> The Court then reasoned that they were wary of invoking the adopt-the-sister-state’s-construction rule for that state’s intermediate courts rather than their highest court, as *Graham* is not a decision made by California’s highest court.<sup>11</sup> The Court declined to apply NRS 42.021 in the same manner that the California court applied the Civil Code in *Graham*.

**Conclusion**

The Court held that the district court properly applied the plain language of NRS 42.021(1) and (2), prohibiting a payer of collateral source benefits from seeking reimbursement from a medical malpractice plaintiff only when the medical malpractice defendant “introduces evidence”

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<sup>9</sup> *Graham v. Workers’ Compensation Appeals Board*, 258 Cal. Rptr. 376 (Ct. App. 1989).

<sup>10</sup> *See White v. Warden, Nev. State Prison*, 96 Nev. 634, 636, 614 P.2d 536, 537 (1980).

<sup>11</sup> *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P. 3d 1280, 1288 n.38 (2006) (observing that it is a party’s responsibility to support arguments with on-point authority).

of those payments. The Court further concluded that the statute was the correct authority to be applied in this matter, affirming the judgment of the district court.