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Yafchak v. S. Las Vegas Med. Inv'rs., 138 Nev. Adv. Op. 70 (Oct. 27, 2022)

Colin Meenk

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Yafchak v. S. Las Vegas Med. Inv'rs., 138 Nev. Adv. Op. 70 (Oct. 27, 2022)¹
SUPREME COURT CLARIFIES DISTINCTION BETWEEN PROFESSIONAL
NEGLIGENCE AND ELDER ABUSE COMPLAINTS.

Summary

Professional negligence complaints are distinct from elder abuse complaints, with only the former requiring an affidavit of merit attached to the complaint. Where the type of complaint is unclear in regard to professional negligence and elder abuse, courts must look to the substance of the complaint to determine the scope and assess whether attachment of an affidavit of merit is statutorily required.

Background

Appellant Lynn Yafchak filed a complaint against respondent nursing home Life Care Center of South Las Vegas (LCC) for injuries suffered by her decedent mother. The complaint asserted elder abuse, negligence, and wrongful death, without specifying any tortious actions or individuals. Respondent moved to dismiss, arguing the complaint sounded in professional negligence, which requires attachment of an affidavit of merit. The district court agreed with respondent, citing *Estate of Curtis v. South Las Vegas Medical Investors, LLC*,² and granted the motion to dismiss.

Discussion

In Nevada, professional negligence actions are covered by NRS Chapter 41A, while elder abuse actions are under NRS 41.1395. These claims are distinct and only those brought under NRS Chapter 41A require an affidavit of merit.³ The Court in *Curtis* held that even absent explicit inclusion of professional negligence, an affidavit of merit may be required if the underlying allegations of a complaint sound in professional negligence.⁴ Courts must focus on the substance, rather than form, of each claim when determining whether an affidavit of merit is required.⁵

Here, the Court reviews de novo the district court's finding that appellant's complaint sounded in professional negligence, and its subsequent dismissal for failure to attach an affidavit of merit in compliance with NRS 41A.071.⁶ To affirm the ruling, the Court looks for definitiveness beyond a reasonable doubt that the appellant-plaintiff cannot prove any facts that would entitle her to relief,⁷ as the burden is on the defendant to demonstrate the plaintiff's complaint sounds in professional negligence and therefore warrants dismissal.

Yafchak's complaint focuses on two instances: (1) LCC's failure to properly assess her mother after she fell, and (2) LCC's failure to monitor and care for her. The Court finds it unclear whether this conduct falls under professional negligence as opposed to elder abuse, as the allegation lacks information critical to making that determination. NRS Chapter 41A only holds liable providers of health care for medical negligence, and it is yet unknown in this case, both whether the conduct at issue was medical negligence, and if it was conducted by a provider of health care. The complaint does not specify any individuals at fault, nor which negligent acts were committed. Respondent, as the moving party, had the burden of demonstrating the allegations arose from professional negligence, but provided no evidence to do so. Because there

¹ By Colin Meenk.

² See generally *Estate of Curtis v. S. Las Vegas Med. Inv'rs, LLC*, 136 Nev. 350, 466 P.3d 1263 (2020).

³ Compare NEV. REV. STAT. 41A.071 (2021), with NEV. REV. STAT. 41.1395 (2021).

⁴ *Curtis*, 136 Nev. at 353-54, 466 P.3d at 1266-67.

⁵ *Id.* at 353, 466 P.3d at 1266.

⁶ *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014).

⁷ *Id.* at 736, 334 P.3d at 405.

may exist facts that place the allegations within the scope of elder abuse as opposed to professional negligence, the Court reverses the district court's order dismissing the complaint.

Conclusion

Professional negligence claims and elder abuse claims are separate and distinct. Only a professional negligence complaint requires attachment of an affidavit of merit. Where allegations do not specify, but rather sound in, professional negligence, it is the defendant's burden to prove the sounding in of professional negligence when motioning to dismiss for lack of an affidavit of merit. Further factfinding is needed here to determine whether appellant's complaint falls under professional negligence and therefore needs an affidavit of merit. The respondent-defendant did not meet its burden, and therefore the district court's order to dismiss was in error. This Court reverses the order and remands to the district court.