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Igtiben v. Eighth Jud. Dist. Ct., 140 Nev. Adv. Rep. 9 (Feb. 22, 2024)¹

INQUIRY NOTICE OF A CLAIM BEGINS ONCE THE PLAINTIFF OR THEIR REPRESENTATIVE HAS RECEIVED ALL NECESSARY MEDICAL RECORDS DOCUMENTING THE RELEVANT TREATMENT AND CARE AT ISSUE UNLESS THERE IS AN IMPEDIMENT TO PURSUING AN ACTION SUCH AS THE CONCEALMENT OF MEDICAL RECORDS.

Summary

The Nevada Court of Appeals held that the district court failed to dismiss Plaintiff's complaint for professional negligence and wrongful death because the claims were untimely under NRS 41A.097(2) since they were filed two years and ten months from date on which real party in interest received the relevant medical records. The Court highlighted the lack of dispute surrounding the receipt of the medical records—noting that an only an impediment such as concealment of records would prevent inquiry notice tolling to begin, which was not the case here. The Court noted that receipt of all relevant records will constitute inquiry notice unless an impediment existed that prevented the Plaintiff from commencing an action, such as concealment of medical records.

Background

On January 6, 2020, following the death of Kamario Mantrell Smith, Linda Smith, his mother, received all relevant medical records from St. Rose San Martin Hospital, which documented the treatment and care provided by Dr. Christopher Igtiben. Ms. Smith also obtained a copy of the death certificate that indicated the cause of death as a pulmonary embolism, with additional conditions including acute renal failure, hypertension, and atrial fibrillation. The autopsy report, although not present in the record, reportedly classified the manner of death as “natural,” as acknowledged by both parties.

Around September 2021, Ms. Smith hired Dr. Lary Simms, a pathologist, to review her son's medical records for the federal lawsuit. In February 2022, Dr. Simms concluded that Kamario's death resulted from exposure to intravenous contrast ordered by Dr. Igtiben, leading to kidney failure due to sickle cell anemia. Eight months later, on November 22, 2022, Ms. Smith filed a complaint in the Eighth Judicial District against petitioners Dignity Health on behalf of Kamario's estate.

Dr. Igtiben sought to dismiss Plaintiff's complaint, citing the expiration of the statute of limitations under NRS 41A.097(2). The district court rejected the motion, suggesting that the statute did not begin to run until Dr. Simms formed his opinions in February 2022. Dr. Igtiben subsequently filed a writ petition challenging the district court's decision, joined by Dignity Health entities.

Discussion

A plaintiff is placed on inquiry notice of potential claims for medical malpractice when they receive all relevant medical records.

¹ By Laura Lomeli.

The Nevada Supreme Court has explicitly held that a person is on inquiry notice of their medical malpractice claim when they have received all relevant medical records which contain facts that would have led an ordinarily prudent person to investigate further into whether their injury was caused by someone's negligence. The primary issue at hand in this case was whether Ms. Smith was on inquiry notice when she received the medical records from St. Rose Hospital. The Court held that Ms. Smith was in fact on inquiry notice, emphasizing that she had access to facts within those records that would lead an ordinarily prudent person to further investigate whether the treatment could have been the cause of her son's death.

An action filed more than 3 years after the date of the injury or 1 year after being on inquiry notice is untimely pursuant to NRS 41A.097(2).

Pursuant to NRS 41A.097(2), "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of the injury or 1 year after the plaintiff discovers or through use of reasonable diligence should have discovered the injury, whichever occurs first."²

The Court in this case held that the district court failed to dismiss Ms. Smith's Complaint as untimely emphasizing that she was on inquiry notice when she received the relevant medical records. Given that there was no dispute as to the receipt of the medical records and Ms. Smith did not file until 2 years and 10 months after their receipt, the Court held that dismissal as to the timeliness of the Complaint was appropriate under NRS 41A.097(2). The Court applied the 1-year limitation period opposed to the 3-year period because she was on inquiry notice of her claim when she received the relevant medical records—and NRS 41A.097(2) provides that whichever of the two comes first, that one will apply.

Conclusion

The district court failed to dismiss Ms. Smith's Complaint as untimely pursuant to NRS 41A.097(2). Given that she had all the relevant medical records necessary to pursue the action and no impediment to Ms. Smith's filing suit before the statute of limitations expired existed, the district court was required to dismiss the Complaint as untimely.

² NRS 41A.097(2).