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Segovia v. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 112 (Dec. 28, 2017)

Alexis Wendl

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TORTS: STATUTORY INTERPRETATION

Summary

The Court determined that (1) the 2015 amendment that added "physician assistant" to NRS 41A was not intended to clarify the previous statute's original intent; and (2) The 2015 Legislature intended for the 2015 amendment that added "physician assistant" to NRS Chapter 41A to apply prospectively.

Background

In February 2012, Dr. George Michael Elkanich diagnosed Mary Haase, the mother of real party in interest Madden Duda, with bilateral lower extremity radiculopathy. Dr. Elkanich recommended surgery and selected physician assistant Jocelyn Segovia to assist in the surgery. During the surgery on March 5, 2012, Dr. Elkanich and/or Segovia allegedly tore, sliced, or punctured Haase's aorta which caused her to die mid-surgery. The coroner's report provided that she died from the blood loss that occurred from the laceration to her heart.

Duda filed a medical malpractice claim and moved for summary judgment as to Jocelyn Segovia. The motion argued that Segovia was not entitled to NRS 41A's abrogation of joint and several liability or the $350,000 damages cap because she, as a physician assistant, was not considered a "[p]rovider of healthcare" per NRS 41A.017. The district court granted the motion for summary judgment because NRS 41A.017 did not extend to physician assistants at the time of the decedent's death and the subsequent 2015 amendment that added "physician assistant" only applies prospectively.

Discussion

Writ relief

Here, Segovia sought relief through a writ of prohibition or, alternatively, a writ of mandamus. Segovia argued that the Court should resolve the writ petition to encourage judicial economy since many defendants in the underlying lawsuit already settled. Further, Segovia provides that she would be able to make informed settlement decisions if she knew whether or not she was entitled to the damages cap provided in NRS Chapter 41A.

The Court considered the purposes of a writ of prohibition or a writ of mandamus and its discretion to consider petitions that seek extreme remedies despite an available legal remedy.[2] Accordingly, the Court considered the writ as a writ for mandamus since Segovia urged the district court to retroactively apply the amended version of NRS Chapter 41A, and because the Court had conflicting statements in a published opinion and an unpublished order concerning that issue.

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[1] By Alexis Wendl.

[2] Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 39, 175 P.3d 906, 907–08 (2008); Cheung v. Eighth Judicial Dist. Court, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005); Barngrover v. Fourth Judicial Dist. Court, 115 Nev. 104, 111, 979 P.2d 216, 220 (1999).

The 2015 amendment to NRS 41A.017 does not apply retroactively

Following the "Keep our Doctors in Nevada" initiative, the 2015 Legislature specifically amended NRS Chapter 41A to limit health care provider liability by preventing the amount of noneconomic damages in medical malpractice suits from exceeding $350,000 "regardless of the number of plaintiffs, defendants or theories upon which liability [is] based."[3] Additionally, the 2015 amendment abrogated joint and several liability, meaning health care providers are severally liable only for the portion of the judgment that represents a specific defendant's attributable percentage of negligence.[4]

Notably, at the time of the 2012 surgery, NRS 41A.017 did not include "physician assistant" in the relevant definition for "[p]rovider of health care." It was not until the 2015 amendment, after the decedent's surgery, that "physician assistant" was added to NRS 41A.017. Thus, the Court considered whether the 2015 Legislature intended to clarify the original intent of the previous version of the statute, or if the 2015 Legislature intended for the amendment to apply only prospectively.

Here, Segovia referenced John Cotton's testimony before the Senate Committee to demonstrate that the 2015 amendment reestablished and clarified the intent of the original statute.[5] Further, the Court previously ruled in the unpublished *Zhang v. Barnes* opinion that the 2015 amendment to NRS 41A.017 clarified, rather than changed, the law.[6] However, the *Zhang* decision involved another NRS chapter that must be read in harmony with NRS 41A.017. Accordingly, the *Zhang* decision did not state that each 2015 amendment clarified the original intent and should apply retroactively. Moreover, in *Humboldt General Hospital v. Sixth Judicial District Court*, the Court declined to retroactively apply another 2015 amendment to NRS 41A.017 that required medical malpractice actions be accompanied by a medical expert affidavit.[7]

The Court determined that the pre-amendment version of NRS 41A.017 was not ambiguous on its face since it specifically defined "provider of health care." Further, the legislative history, although contradictory, does not rebut the strong presumption against retroactivity since the Legislature did not explicitly permit retroactivity. NRS 41A.017 specifically states that the 2015 amendment applies prospectively.[8] Moreover, there is a strong presumption that amendments to statutes are to be applied prospectively.[9]

Conclusion

Thus, the Court denied Segovia's writ petition since the 2015 amendments to NRS 41A.017 do not apply retroactively. Segovia failed to rebut the strong presumption of prospective application, and the senate bill specifically stated that the 2015 amendments applied prospectively.[10]

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[3] NEV. REV. STAT. § 41A.035 (2017).
[4] NEV. REV. STAT. § 41A.045 (2017).
[5] *See Hearing on S.B. 292 Before the Senate Judiciary Comm.*, 78th Leg. (Nev., March 26, 2015) (testimony of John Cotton, KODIN).
[6] Zhang v. Barnes, Docket No. 67219 (Order Affirming in Part, Revising in Part, and Remanding, Sept. 12, 2016).
[7] 132 Nev. Adv. Op. 53, 376 P.3d 167 (2016).
[8] 2015 Nev. State. Ch. 439, § 11, at 2529 ("The amendatory provisions of this act apply to a cause of action that accrues on or after the effective date of this act.").
[9] Badger v. Eighth Judicial Dist. Court, 132 Nev. Adv. Op. 39, 373 P.3d 89, 94 n.1 (2016).
[10] 2015 Nev. State., ch. 439, § 11 at 2529; S.B. 292, 78th Leg. (Nev. 2015).