

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENEE TURNER AND CLIFF
TURNER, WIFE AND HUSBAND,
Appellants,
vs.
RICHARD L. YOUNG, M.D., AND THE
ELKO CLINIC,
Respondents.

No. 43778

FILED

MAR 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a district court order granting reconsideration and dismissing a medical malpractice action. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

In April 2001, appellants Renee Turner and her husband Cliff Turner filed a medical malpractice complaint with the Medical Dental Screening Panel (MDSP) against respondents Dr. Richard L. Young, The Elko Clinic, and others. The Turners alleged that Dr. Young negligently removed Renee's uterus by failing to obtain Renee's informed consent and by removing a healthy uterus. The MDSP found no "reasonable probability" of malpractice.

In November 2002, the Turners filed a medical malpractice action in district court. However, the district court dismissed the action because the Turners failed to provide an expert affidavit under NRS 41A.071 to support the allegations in the complaint. The allegations were similar to those raised in the MDSP complaint. The Turners appealed.

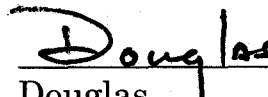
While the appeal was pending, this court decided Szydel v. Markman.¹ In Szydel, we concluded that the affidavit requirement of NRS


¹121 Nev. ___, 117 P.3d 200 (2005).

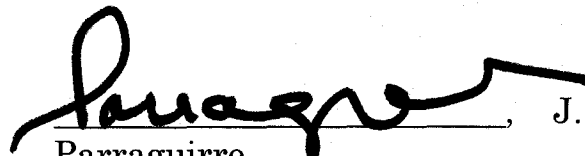
41A.071 did not apply when the plaintiff's allegations invoked the doctrine of res ipsa loquitur under NRS 41A.100(1)(a)-(e).² In their reply brief, the Turners argue that their claims raise the doctrine of res ipsa loquitur under NRS 41A.100(1)(e).

Because the district court did not have the benefit of our decision in Szydel prior to dismissing the Turners' case, we

ORDER this matter REMANDED to the district court for proceedings to determine whether the Turners' allegations fall under one or more of the circumstances described in NRS 41A.100(1)(a)-(e), thus obviating the application of NRS 41A.071 to their case under Szydel.³


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

²Id. at ___, 117 P.3d at 204-05.

³We have considered Turner's remaining contentions on appeal and conclude that they are without merit: (1) NRS 41A.071 does not apply to her because she filed her complaint with the MDSP before the statute was enacted, even though she filed her district court complaint after enactment of the statute; (2) NRS 41A.071 violates both the Nevada and United States Constitutions' provisions of Equal Protection and Due Process because the statute prevents people who cannot afford to pay a doctor for the requisite affidavit from pursuing their medical malpractice claims; and (3) the district court erred by granting Young's motion to dismiss because Young failed to seek leave of court under DCR 13(7) prior to filing his motion for reconsideration.

cc: Hon. Andrew J. Puccinelli, District Judge
David D. Loreman
Schuering Zimmerman & Scully
Elko County Clerk