

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY HOPKINS, AN INDIVIDUAL,
Appellant,

vs.

FRANCIS G. D'AMBROSIO, M.D., AN
INDIVIDUAL; FRANCIS G.
D'AMBROSIO, M.D., INC., A NEVADA
PROFESSIONAL CORPORATION; F.G.
D'AMBROSIO, M.D. SPINE, INC., A
NEVADA PROFESSIONAL
CORPORATION; AND ADVANCED
ORTHOPEDECS AND SPINAL
SURGERY ASSOCIATES, INC., A
NEVADA CORPORATION, D/B/A
ADVANCED ORTHOPEDIC CARE
ASSOCIATES,
Respondents.

No. 43870

FILED

MAY 17 2006

J. A. Bloom
JANET A. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing the medical malpractice complaint of appellant Jerry Hopkins, based upon the expiration of the statute of limitations. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. Because Hopkins did not initiate a legal action¹ within two years of the date on which he discovered respondent Dr. Francis G. D'Ambrosio's alleged negligence, we affirm the dismissal of his complaint under NRCP 12(b)(5).

Hopkins initially consulted with Dr. D'Ambrosio on June 12, 1997, regarding his back injury. Dr. D'Ambrosio performed an anterior C4

¹Hopkins could have filed a complaint with the Medical Dental Screening Panel before its statutory abolition on August 7, 2002.

– C7 fusion upon Hopkins on November 19, 1997. On May 11, 1998, Dr. D’Ambrosio performed another spinal fusion upon Hopkins.

At the time of Hopkins’ surgeries and at his last consultation with Dr. D’Ambrosio on March 21, 2000, NRS 41A.097(1) required that a medical malpractice complaint be filed within four years of the date of injury or within two years “after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.”² “[I]njury’ as used in NRS 41A.097(1) means legal injury.”³ Legal injury occurs when “all essential elements of the malpractice cause of action” accrue and “encompasses not only the physical damage but also the negligence causing the damage.”⁴

Hopkins did not file his complaint within two years of the date he discovered Dr. D’Ambrosio’s alleged negligence.⁵ The record on appeal contains a letter dated May 9, 2001, written by attorneys for Hopkins making a claim to Dr. D’Ambrosio’s insurer. This letter confirms that

²1995 Nev. Stat., ch. 621, § 17, at 2350-51 (emphasis added). The Legislature amended NRS 41A.097 in 2002. 2002 Nev. Stat., ch. 3, § 11, at 8. NRS 41A.097(1) now applies the four-year/two-year limitation to injuries suffered before October 1, 2002. NRS 41A.097(2) now requires that for injuries suffered on or after October 1, 2002, the plaintiff must file his complaint within three years after the date of injury or within one year “after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.”

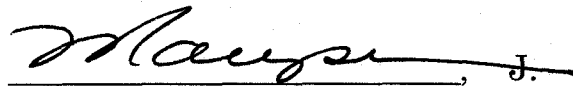
³Massey v. Litton, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983).

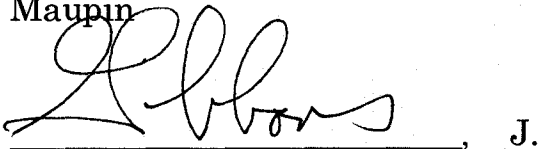
⁴Id. at 726, 669 P.2d at 250.

⁵We “rigorous[ly]” review orders granting dismissal under NRCP 12(b)(5) and “construe the pleading liberally and draw every fair inference in favor of the non-moving party.” Simpson v. Mars, Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

Hopkins knew as of this date of Dr. D'Ambrosio's alleged negligence. Since Hopkins discovered his legal injury on or before May 9, 2001, the statute of limitations required Hopkins to initiate his legal action no later than May 9, 2003. Hopkins did not file his complaint with the district court until March 24, 2004. Therefore, the district court properly dismissed the complaint.

Accordingly, we ORDER the judgment of the district court AFFIRMED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

cc: Hon. Valerie Adair, District Judge
Cobeaga Tomlinson, LLP
John H. Cotton & Associates, Ltd.
Clark County Clerk