

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRIT FRIDMAN,  
Appellant,

vs.

NETZORG & CASCHETTE, P.C.; JOHN  
NETZORG, INDIVIDUALLY; AND  
KENNETH CASCHETTE,  
INDIVIDUALLY,  
Respondents.

No. 44145

**FILED**

NOV 22 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' motion to dismiss appellant's complaint for legal malpractice. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In an underlying fraudulent transfer case, appellant obtained a default monetary judgment against Real Estate Limited Liability Company (RELLC). Respondents represented RELLC in the fraudulent transfer case, and, in partial settlement of the default judgment, RELLC assigned to appellant its claim for legal malpractice against respondents. In her complaint in the instant case, appellant alleged that she was entitled to \$20,000 as assignee of RELLC's legal malpractice claim.

On appeal, appellant argues that, because the malpractice claim assignment was bargained for fairly and properly as part of a

settlement, the district court erred when it dismissed her complaint, concluding that legal malpractice actions are not assignable.<sup>1</sup>

“This court rigorously reviews a district court’s dismissal of an action under NRCP 12(b)(5) for failure to state a claim.”<sup>2</sup> When the complaint’s allegations are insufficient to establish the elements of a claim for relief, dismissal is proper.<sup>3</sup> Public policy does not permit the assignment of an action for legal malpractice when the original client never pursued the claim.<sup>4</sup>

Although appellant maintains that RELLC had asserted its claim against respondents during the settlement negotiations, the record shows that RELLC never pursued any malpractice action against

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<sup>1</sup>Appellant prepared a Civil Proper Person Appeal Statement outlining the issue on appeal. See ADKT No. 385 (Order Establishing Pilot Program in Civil Appeals, June 10, 2005).

<sup>2</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002) (citation omitted).

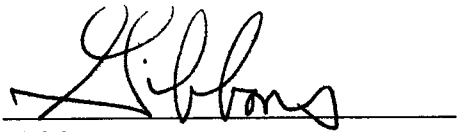
<sup>3</sup>Id. (citations omitted).

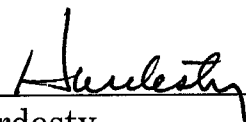
<sup>4</sup>See Achrem v. Expressway Plaza Ltd., 112 Nev. 737, 740-741, 917 P.2d 447, 449 (1996) (confirming that, although the proceeds of a tort claim may be assigned, for public policy reasons, the rights to a tort action cannot properly be assigned to a third party); see also Chaffee v Smith, 98 Nev. 222, 224, 645 P.2d 966, 966 (1982) (holding that a legal malpractice action that has been transferred by assignment, but which was never pursued by the original client, is unenforceable as a matter of public policy, given that the decision as to whether to bring the action is one “peculiarly vested in the client”).

respondents. Thus, because our caselaw clearly forecloses enforcement of a legal malpractice action transferred by assignment,<sup>5</sup> we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Honorable Jackie Glass, District Judge  
Irit Fridman  
Brenske & Christensen  
Clark County Clerk

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<sup>5</sup>Achrem, 112 Nev. at 740-41, 917 P.2d at 449; Chaffee, 98 Nev. 223-24, 645 P.2d at 966.