

IN THE SUPREME COURT OF THE STATE OF NEVADA

LILLIE BESSER,  
Appellant,  
vs.  
FRANK CREMEN, ESQ.,  
INDIVIDUALLY AND  
PROFESSIONALLY; AND THE LAW  
OFFICES OF FRANK CREMEN, A  
LIMITED LIABILITY CORPORATION,  
Respondents.

No. 44606

**FILED**

FEB 02 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment and from a post-judgment order denying appellant's motion for relief from the judgment under NRCP 60(b). Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In 1992, appellant Lillie Besser filed a proper person bad faith claim denial action against her insurance company, Metropolitan Property and Casualty Insurance Company. Beginning in May 1994, Besser retained respondent Frank Cremen to represent her in the bad faith action. While that case was pending, the State initiated criminal proceedings against Besser for insurance fraud, stemming from Metropolitan's report to the insurance commissioner that it had deposition testimony from Moshe Perelman, Besser's former friend, indicating that Besser had personally participated in the vandalism of her own home and inflated the appraised value of insured property. Cremen also defended Besser in the criminal proceeding.

In light of the pending criminal case, Metropolitan and Besser twice stipulated to stay Besser's bad faith action, but before the criminal

case was resolved and after the stipulated stays had expired, Metropolitan filed a motion under NRCP 41(e) to dismiss Besser's bad faith action for her failure to bring the case to trial within five years. The district court ultimately dismissed the action without prejudice on February 22, 1999.

In the meantime, in August 1999, Besser was acquitted in the criminal insurance fraud case. Besser then filed a second action against Metropolitan, alleging the original bad faith claims, as well as a new claim for malicious prosecution arising out of the criminal prosecution. Upon Metropolitan's motion, the district court dismissed Besser's second case, finding that the statute of limitations had run on her bad faith claims and that her malicious prosecution claim failed because Metropolitan had probable cause to report Besser to the insurance commissioner.<sup>1</sup> This court affirmed the dismissal on appeal.<sup>2</sup>

Besser then filed the underlying legal malpractice action against Cremen and his law firm, also a respondent in this appeal, based on respondents' failure to prosecute her original bad faith action within the five-year prescriptive period. Respondents moved for summary judgment, arguing that Besser had failed to demonstrate that, but for their alleged negligence, she would have been successful in her action against Metropolitan. In this, respondents argued that Besser had failed to demonstrate damages for the alleged bad faith failure to pay insurance benefits and pointed to this court's order affirming the district court's

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<sup>1</sup>Because the court considered matters outside of the pleadings, the motion for dismissal was treated as one for summary judgment.

<sup>2</sup>Levy v. Metropolitan Property & Casualty Ins. Co., Docket No. 36842 (Order of Affirmance, November 14, 2001; Order Denying Rehearing, May 3, 2002).

dismissal of her second action against Metropolitan for malicious prosecution. In that order, this court concluded that Metropolitan had provided strong evidence to support its suspicion that Besser had submitted a fraudulent insurance claim and, thus, it had probable cause to submit its report to the Insurance Commission. Respondents argued that the order represented the law of the case in that it established that Metropolitan had a meritorious defense against Besser's bad faith and malicious prosecution claims and, thus, notwithstanding respondents' alleged failure to timely prosecute the bad faith claims, Besser's legal malpractice action was foreclosed.

The district court denied the motion without prejudice in order to allow Besser an additional ninety days within which to provide admissible evidence regarding her case against Metropolitan. Respondents renewed their motion ninety days later, and Besser opposed it, arguing that Metropolitan's failure to fully pay her insurance claim occurred at least a year before Perelman's deposition and, thus, its failure to pay was unrelated to Perelman's statements.

The district court granted respondents' renewed motion, finding that Besser had failed to produce any relevant admissible evidence to preclude summary judgment. The court also found that this court's affirmance order supported summary judgment. Besser filed a motion for relief from the summary judgment, under NRCP 60(b), along with a motion for an extension of time to complete discovery, asserting that the court should find that there existed potential for undeveloped, genuine factual issues, and that she should be allowed an additional sixty days for discovery. The court denied Besser's motions, finding that she had had more than enough time to complete discovery, including an additional

ninety days beyond what was scheduled at the case conference, but nevertheless failed to produce any admissible evidence to support her claims. Besser appeals.

On appeal, Besser argues that she should have been allowed additional time to complete discovery and an evidentiary hearing in order to establish the causation element of her legal malpractice claim. She concedes that, without the additional discovery, she could not offer any further admissible evidence to show that respondents' breach proximately caused her damages. At the same time, she argues that Perelman's testimony was suspect and, because respondents knew that Perelman had a criminal history, they had "an affirmative duty to act properly." Thus, she argues, the district court "improperly refused to find that this evidence create[d] a genuine issue of material fact to oppose respondents' motion for summary judgment."

This court reviews de novo a district court's decision to grant summary judgment.<sup>3</sup> Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to appellant, demonstrate that no genuine issue of material fact remains in dispute and that respondents were entitled to judgment as a matter of law.<sup>4</sup> An order denying a motion for NRCP 60(b) relief is reviewed for an abuse of discretion.<sup>5</sup> The district court or the discovery commissioner, in scheduling a case for trial, is required to limit the time to complete

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<sup>3</sup>See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>4</sup>Id.

<sup>5</sup>Kahn v. Orme, 108 Nev. 510, 835 P.2d 790 (1992).

discovery.<sup>6</sup> Absent a clear abuse of discretion, we will not disturb the district court's decision regarding discovery.<sup>7</sup>

In order to establish a prima facie legal malpractice case, the client must demonstrate, among other things, that the attorney's breach proximately caused the client's damages, and that the client suffered actual loss or damage resulting from the attorney's negligence.<sup>8</sup> A bad faith failure to pay claim is established "where the insurer acts unreasonably and with knowledge that there is no reasonable basis for its conduct."<sup>9</sup> In Pemberton v. Farmers Insurance Exchange, this court explained that "[a]n insurer fails to act in good faith when it refuses 'without proper cause' to compensate the insured for a loss covered by the policy."<sup>10</sup>

Upon review of the record and consideration of the parties' briefs, we conclude that the district court properly granted summary judgment to respondents. Besser failed to demonstrate that she could have succeeded on the bad faith action, since she provided no evidence of damages therein or the amount of unpaid insurance benefits. Although, as appellant asserts, Perelman's allegations that appellant engaged in insurance fraud may have been suspect, those allegations nevertheless provided a proper

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<sup>6</sup>NRCP 16(b)(3).

<sup>7</sup>Diversified Capital v. City N. Las Vegas, 95 Nev. 15, 23, 590 P.2d 146, 151 (1979).

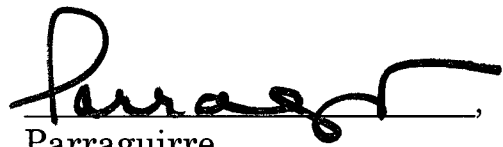
<sup>8</sup>See Day v. Zubel, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996).

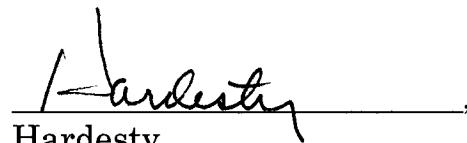
<sup>9</sup>See Guaranty Nat'l Ins. Co. v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996).


<sup>10</sup>109 Nev. 789, 793, 858 P.2d 380, 382 (1993).

cause for Metropolitan to delay paying appellant's insurance claim in full. As this court noted in its order affirming the dismissal of appellant's second case against Metropolitan, Metropolitan had evidence of fraud, and thus reason to report her to the Insurance Commissioner. Therefore, Besser was unable to show that she suffered damages from respondents' alleged malpractice in not timely bringing her case to trial. As the district court properly granted summary judgment, we affirm the district court's order. Further, as the district court did not abuse its discretion in disallowing additional time, post judgment, for discovery, or in denying Besser relief from the judgment, we affirm the district court's order denying her motion for relief under NRCP 60(b).

It is so ORDERED.

 J.  
Parraguirre

 J.  
Hardesty

 J.  
Saitta

cc: Hon. Valerie Adair, District Judge  
Lillie Besser  
Wait Law Firm  
Eighth District Court Clerk