IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH VIGNEUX, INDIVIDUALLY; AND FRANCIS VIGNEUX, INDIVIDUALLY,
Appellants,
vs.
SUNRISE HOSPITAL MEDICAL CENTER, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 44730

FILED

DEC 01 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a medical malpractice action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

After injuring his lower back, appellant Kenneth Vigneux elected to undergo emergency surgery to repair a herniated fragment of his spine. The surgery, completed on September 4, 1998, was performed by Francis G. D'Ambrosio, M.D. at a surgical suite owned by respondent Sunrise Hospital Medical Center, LLC.

Following his discharge from the hospital, Vigneux started to experience neurological problems, including numbness of his lower left side extremity and a foot drop condition. In his follow-up examinations, which ended on December 8, 1998, Vigneux discussed his condition with Dr. D'Ambrosio who opined that the problems were normal for the type of surgery performed.

During the subsequent two years, however, Vigneux began to suspect that he chose the "wrong doctor" and that his condition was the direct result of medical malpractice. At his employment, Vigneux met

multiple individuals who expressed negative views about Dr. D'Ambrosio, including a coworker who related his wife's troubled surgical experience. Moreover, Vigneux testified at his deposition that he first suspected, on or before July 10, 2000, that Dr. D'Ambrosio had done something wrong during the surgery.[1] Vigneux confirmed this suspicion through ensuing consultations with William D. Smith, M.D. who noted, on October 12, 2000, that tests revealed the existence of nerve damage caused by "surgical changes or arachnoiditis."

On July 30, 2002, more than two years after his initial suspicion of negligence, Vigneux commenced the underlying medical malpractice action against Francis G. D'Ambrosio, M.D., Inc.; Francis G. D'Ambrosio, M.D. Spine, Inc.; Advanced Orthopedic Care Associates; Francis G. D'Ambrosio, M.D. (collectively, the "D'Ambrosio defendants"); and Sunrise Hospital. Against Sunrise Hospital, Vigneux claimed that the hospital was negligent in allowing Dr. D'Ambrosio the use of its surgical suite and/or providing surgical privileges to him.

The D'Ambrosio defendants moved for summary judgment, arguing that the suit was barred under the applicable two-year statute of limitations for medical malpractice claims.[2] Sunrise Hospital joined the motion, and the district court granted summary judgment, dismissing

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[1]Specifically, Vigneux was asked, "[c]an you estimate for how long it was before you saw Dr. Smith [on August 10, 2000] that you started feeling that [Dr. D'Ambrosio had done something wrong during the surgery]? More than a month?" Vigneux answered, "[y]es."

[2]NRS41A.071(1).

with prejudice Vigneux's claims against each of the named defendants. This appeal followed.[3]

On appeal, Vigneux contends that the two-year statute of limitations did not expire because (1) he was not aware of any alleged negligence until after consulting with Dr. Smith, less than two years before filing his medical malpractice complaint, and (2) Dr. D'Ambrosio had failed to recommend further testing and otherwise concealed the severity of any post-surgery problems. Upon de novo review, we conclude that both contentions lack merit.[4]

Under Nevada law, "an action for injury [occurring before October 1, 2002] . . . against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through use of reasonable diligence should have discovered the injury, whichever occurs first."[5] We have previously held that the latter discovery rule commences when a patient "knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action."[6]

Applying this rule here, we conclude that Vigneux was on notice of his medical malpractice claims on or before July 10, 2000—more

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[3]We note that Sunrise Hospital is the only remaining defendant in this appeal as Vigneux has since settled with the D'Ambrosio defendants.

[4]The standard of review for an appeal of a summary judgment is de novo. Wood v. Safeway, Inc., 121 Nev. 724, ___, 121 P.3d 1026, 1029 (2005).

[5]NRS 41A.097(1).

[6]Massey v. Litton, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983).

than two years prior to filing suit—when he first admittedly began to suspect that Dr. D'Ambrosio had done something wrong during the surgery. We emphasize that under the discovery rule, a patient needs only to develop personal suspicions of negligence, as opposed to precise knowledge, for the statute of limitations to commence.[7] This does not mean that negative views about Dr. D'Ambrosio expressed to Vigneux by other individuals triggered the limitations period. However, once Vigneux perceived, in his own mind, a connection between his injuries and the surgery, he assumed a duty to exercise diligence to seek out the cause of his injuries.[8] For this reason, the fact that Vigneux did not obtain specific evidence of medical malpractice until Dr. Smith's October 12, 2000 report is irrelevant as the commencement of the limitations period depends on "the patient's knowledge of or access to facts rather than on [the] discovery of legal theories."[9]

Furthermore, because Vigneux suspected negligence two years prior to filing suit, we conclude that any alleged concealment by Dr. D'Ambrosio is insufficient to raise a genuine issue of material fact. While the parties dispute whether Dr. D'Ambrosio recommended further testing during Vigneux' final follow-up examination, the two-year statute of

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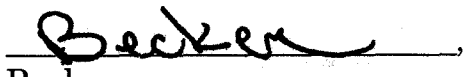
[7]See Dolan v. Borelli, 16 Cal. Rptr. 2d 714, 718 (Ct. App. 1993).

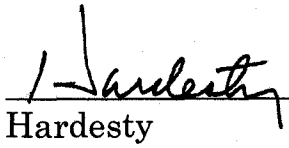
[8]See Jolly v. Eli Lilly & Co., 751 P.2d 923, 928 (Cal. 1988) ("So long as suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her."); see also Floyd v. Western Surgical Associates, 773 P.2d 401, 404 (Utah Ct. App. 1989) (noting that knowledge of a possible connection between the surgery and the injuries is sufficient to begin the running of the statute of limitations).

[9]Massey v. Litton, 99 Nev. at 728, 669 P.2d at 252.

limitations, even if tolled due to concealment, began to run on or before July 10, 2000, and therefore ended before the medical malpractice action commenced. As such, we conclude that the district court did not err in granting summary judgment.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 , J.
Becker

 , J.
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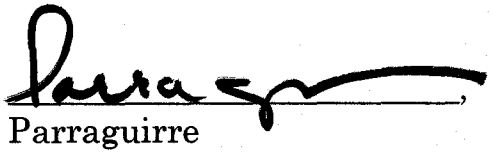 , J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Leonard I. Gang, Settlement Judge
Quon Bruce Christensen Law Firm
Hall, Prangle & Schoonveld, LLC/Las Vegas
Clark County Clerk

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[10]While the allegations against Sunrise Hospital are based on a theory of direct negligence in the hiring and supervision of Dr. D'Ambrosio, Vigneux does not raise on appeal, nor we do not decide, the issue of whether Sunrise Hospital, in seeking summary judgment, was entitled to rely on the date that Vigneux discovered his medical malpractice claims against Dr. D'Ambrosio.