

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM J. STEIN,  
Appellant,

vs.

BENSON, BERTOLDO & BAKER,  
CHTD., A NEVADA PROFESSIONAL  
CORPORATION,  
Respondent.

No. 46193

**FILED**

SEP 08 2006

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing appellant's legal malpractice complaint. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. When it appeared that the district court may have erred, we directed respondent to file a response addressing the merits of this appeal. Respondent filed a timely response.

In reviewing an order granting a motion to dismiss, this court's task is to determine whether the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.<sup>1</sup> In determining whether a claim has been stated, all inferences must be

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<sup>1</sup>Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985).

construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true.<sup>2</sup> The elements of a legal malpractice claim are: (1) an attorney-client relationship, (2) breach of the attorney's duty to use ordinary skill, prudence and diligence in representing the client, and (3) actual damages proximately caused by the attorney's breach.<sup>3</sup> Under the version of NRS 41A.097 in place at the time the complaint was filed, a medical malpractice action must be commenced within four years from the date of injury or two years from the date the plaintiff discovers or should have discovered the injury, whichever occurs first.<sup>4</sup>

Here, appellant alleges in his complaint that he was represented by respondent from March 1997 to August 2000, that Dr. Leibowitz's alleged malpractice was discovered in June 1998, and that a medical malpractice action was commenced in June 2001, by appellant's successor counsel (respondent's former employee who left to establish his own practice). Accordingly, accepting the complaint's allegations as true, as we must, appellant was required to commence any medical malpractice action by June 2000. In June 2000, appellant was represented by

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<sup>2</sup>Breliant v. Preferred Equities Corp., 109 Nev. 842, 858 P.2d 1258 (1993).

<sup>3</sup>Day v. Zubel, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996).

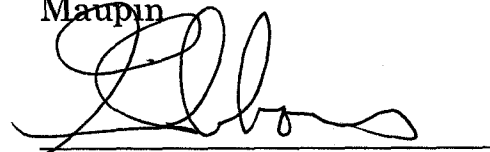
<sup>4</sup>See NRS 41A.097 (1999). Notably, the limitations period has not changed for injuries occurring before October 1, 2002. Compare NRS 41A.097 (2004).

respondent. Thus, appellant has stated a claim against respondent, and the district court erred in dismissing his complaint. Accordingly, we reverse the district court's order and remand this matter for further proceedings consistent with this order.

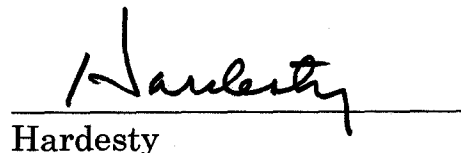
It is so ORDERED.<sup>5</sup>

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Michael A. Cherry, District Judge  
William J. Stein  
Benson, Bertoldo, Baker & Carter, Chtd./Las Vegas  
Clark County Clerk

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<sup>5</sup>We deny appellant's May 17, 2006 motion to delay disposition of this appeal.