


IN THE SUPREME COURT OF THE STATE OF NEVADA

IKEMEFULA CHARLES IBEABUCHI,
Appellant,
vs.
DAVID Z. CHESNOFF, RICHARD A.
SCHONFELD, AND LAW OFFICES OF
GOODMAN & CHESNOFF, AN
ASSOCIATION OF PROFESSIONAL
CORPORATIONS D/B/A GOODMAN &
CHESNOFF,
Respondents.

No. 47261

FILED

FEB 08 2007

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

ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

This is a proper person appeal from a district court order dismissing appellant's complaint. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Our review of an order dismissing a complaint is rigorous.¹ The district court concluded that Paragraph 34 of appellant's complaint

¹See NRCP 12(b)(5); Breliant v. Preferred Equities Corp., 109 Nev. 842, 845, 858 P.2d 1258, 1260 (1993) (noting that, in determining whether a claim has been stated, all inferences must be construed in favor of the non-moving party, and all factual allegations in the complaint must be accepted as true); Edgar v. Wagner, 101 Nev. 226, 699 P.2d 110 (1985) (stating that, 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).

indicates that appellant was aware of the proposed 2003 agreement, under which appellant would dismiss his petition for a writ of habeas corpus and the State would not oppose his parole application, when it was discussed. Thus, he was required to have filed his complaint by 2005.² Since it was not filed until February 13, 2006, the district court dismissed it as barred by the statute of limitations.

Our review of the record, however, reveals that, while appellant states that he was aware in 2003 that some offer had been made by the State, he was not aware of its particulars. Specifically, appellant was not aware that, in addition to dismissing his habeas corpus petition, the agreement would also require him to obtain a removal order from the United States Immigration Service, requiring appellant's return to his native Nigeria. Taking the complaint's allegations as true, as we must,³ appellant further asserts that, despite the fact that the agreement was never executed, respondent David Chesnoff, appellant's attorney, apparently acted consistently with the agreement by informing the district court that appellant's habeas petition should be summarily denied, but Chesnoff did not pursue a removal order from the Immigration Service

²See NRS 11.207 (stating that a malpractice claim against an attorney or a veterinarian must be filed "within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the material facts which constitute the cause of action").

³See Breliant, 109 Nev. at 845, 858 P.2d at 1260.

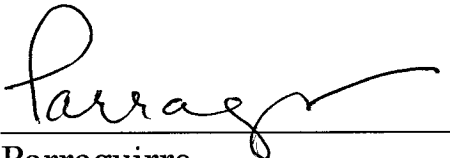
and failed to inform appellant that he should do so. According to the complaint, Chesnoff thereby prejudiced appellant's post-conviction petition for a writ of habeas corpus without any benefit to appellant. Appellant states that he was unaware of the proposed 2003 agreement's particulars until he received a copy of his file in July 2005, upon the termination of Chesnoff's representation.

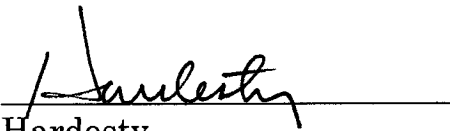
We are unable to conclude that, as a matter of law, appellant was required to assume that his lawyer had not revealed all of the proposed 2003 agreement's terms at the time it was originally proposed, and that appellant had a duty to exercise due diligence to discover any material facts that his counsel had failed to disclose to him in discussing the proposed agreement. Accordingly, the district court erred in dismissing appellant's complaint on the basis that, on its face, it was barred by the statute of limitations.

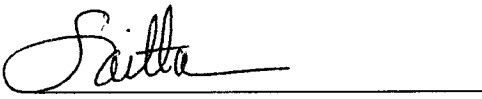
Respondents' response urges that the dismissal as to respondent Richard Schonfeld should nevertheless be affirmed, since the complaint does not allege that Schonfeld ever represented appellant and thus does not state a claim against him. We agree. The only allegation concerning Schonfeld states that Schonfeld met with appellant to discuss his boxing career. This statement does not form a basis for any claim against Schonfeld.

Accordingly, we affirm the district court's order to the extent that it dismissed Schonfeld as a defendant,⁴ we reverse the order in all other respects, and we remand this matter for further proceedings consistent with this order.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Ikemefula Charles Ibeabuchi
Goodman & Chesnoff
Eighth District Court Clerk

⁴See Rosenstein v. Steele, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) (noting that “this court will affirm the order of the district court if it reached the correct result, albeit for different reasons”).