IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERWOOD DIXON, M.D.,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE PETER I. BREEN, DISTRICT JUDGE,
Respondents,
and
ROGER FRANCIS ILES AND IRIS ILES,
Real Parties in Interest.

No. 47997

FILED

NOV 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court order denying Sherwood Dixon, M.D.'s motion to dismiss Roger and Iris Iles' medical malpractice action. According to Dr. Dixon, the underlying case must be dismissed because it was commenced after the NRS 41A.097 limitation period expired.

Whether to consider petitions for mandamus relief is within this court's sound discretion.[1] And unless no disputed factual issues

[1] Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

06-23855

remain and dismissal is clearly required by a statute or rule, or an important issue of law requires clarification, this court will not exercise its discretion to consider writ petitions that challenge district court orders denying motions to dismiss.[2] Instead, an appeal from any adverse final judgment provides an adequate legal remedy, precluding writ relief.[3]

In the present case, on June 26, 2003, two days after he had knee surgery, Roger Iles had a vascular ultrasound on his right lower extremity. Dr. Dixon interpreted the results of the ultrasound as being negative for any occlusion. Six days later, on July 2, 2003, Roger had a second ultrasound, which was interpreted by Dr. George Sieffert, and which revealed the existence of deep venous thrombosis or occlusive disease. On June 21, 2005, the Iles filed a medical malpractice complaint naming Dr. Sieffert, based on misinterpretation of the June 26 ultrasound. But, because Dr. Sieffert did not interpret the June 26 ultrasound, he was dismissed by stipulation on October 21, 2005. On December 29, 2005, the Iles's filed a second amended complaint, naming Dr. Dixon as the defendant. According to the second amended complaint and the medical expert's affidavit, Roger's thrombosis resulted from Dr. Dixon's failure to properly diagnose the then-forming venous obstruction, which, while not a complete occlusion at the time, should have been apparent from the June 26 ultrasound. In other words, according to the amended complaint and the Iles' opposition to Dr. Dixon's motion to dismiss, if Dr. Dixon had

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[2]Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

[3]See Pan v. Dist. Ct., 120 Nev. 222, 88 P.3d 840 (2004).

properly interpreted the June 26 ultrasound, Roger would have received treatment and would not have suffered a deep venous thrombosis.

Dr. Dixon maintains that, because the Iles filed their original complaint against Dr. Seiffert on June 21, 2005, it was apparent that the Iles were concerned about complying with the two-year statute of limitations, and, because both complaints relied upon the contents of Dr. Dixon's written report, the Iles must have been aware of that Dr. Dixon was a potential defendant in this matter. Dr. Dixon thus asserts that the Iles's failure to name him in the original complaint foreclosed them from bringing and maintaining an action against him six months later in light of the statute of limitations.

In opposing the motion to dismiss in the district court, the Iles argued that Roger did not begin to consider whether he had been the victim of medical negligence until about February 2004, after he completed his rehabilitation therapy. Before that time, according to the Iles, Roger suspected that he had developed thrombosis as a result of his treating physician's failure to prescribe blood thinners or as a result of the drains that had been inserted into his knee. The Iles maintained that, during late January or early February of 2004, Roger began to have "an inkling" that the thrombosis that was "visible on the July 2 ultrasound should have, as a matter of layman's logic, been detectable on the [June 26] ultrasound."

The district court, in denying Dr. Dixon's motion to dismiss, stated that Roger would not necessarily have realized that he had an action for negligence on the very day when the alleged negligence occurred, i.e., the date when Dr. Dixon performed the ultrasound, the

results of which, according to the Iles' complaint, should have revealed the forming obstruction that led to Roger's thrombosis.

Upon consideration of the petition and supporting documents, we are not satisfied that this court's intervention by way of extraordinary relief is warranted. In particular, this court has explained that the statute of limitations for malpractice actions begins to run when the injured person knows or should have known that he has suffered a legal injury.[4] Based upon the Iles' statement that they did not suspect until late January or early February of 2004, that the June 26, 2003 ultrasound should have revealed the developing thrombosis, the district court concluded that the statute of limitations had not tolled and, therefore, it denied Dr. Dixon's motion to dismiss. Accordingly, because the parties disputed when the Iles discovered that they might have a medical malpractice action, we cannot conclude that dismissal was clearly mandated by statute or rule. And in the event that Dr. Dixon is aggrieved by the district court's final adjudication of the underlying matter, he has an adequate legal remedy by way of appeal. Moreover, the filing date of the Iles' original complaint, June 21, 2005, does not necessarily indicate, as Dr. Dixon argues, that they were aware of and concerned about meeting the applicable two-year statute of limitations. Depending on the resolution of the disputed factual issues, the Iles may have filed their

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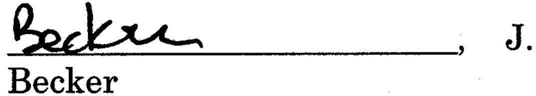
[4]See Massey v. Litton 99 Nev. 723, 728, 669 P.2d 248, 252 (1983) (concluding that, on the facts presented, it was "not clear that appellant either was, or should have been, aware of her cause of action at a date so early as to render the statute of limitations a bar to her claim").

original complaint many months before the limitations period expired. Accordingly, we deny the petition.[5]

It is so ORDERED.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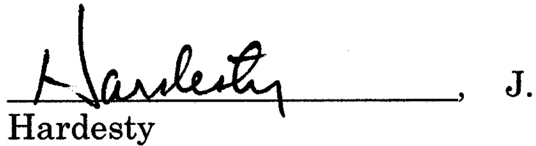
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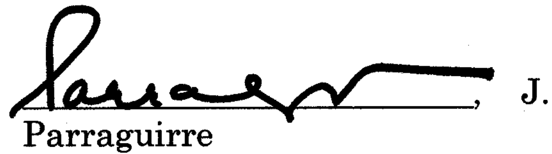
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Parraguirre

cc: Second Judicial District Court Dept. 7, District Judge
Lemons Grundy & Eisenberg
White, Meany & Wetherall, LLP
Washoe District Court Clerk

[5] See NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).