

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAWN WARNER,
Appellant,
vs.
ELIZABETH A. CANNON-LYNCH;
KEVIN KARP; AND DONALD YORK
EVANS,
Respondents.

No. 48497

FILED

MAY 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a legal malpractice action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

This case involves a claim for legal malpractice against respondents. The district court granted respondents' motions to dismiss for failure to state a claim, concluding that the complaint failed to provide any factual support for the malpractice allegation. On appeal, appellant claims that the district court erred in ruling that the complaint failed to state a claim for relief or abused its discretion in refusing to grant appellant's request for leave to file an amended complaint. Respondents argue that no error occurred because the complaint failed to state a sufficient claim and an amendment to the complaint would be futile.

Although we agree with the district court that appellant's complaint failed to set forth sufficient facts to state a claim upon which relief could be granted, we conclude that the district court abused its discretion in failing to grant appellant's request to file an amended complaint. While the denial of a request to amend a complaint is reviewed

for an abuse of discretion,¹ such leave should be granted freely.² A request to amend a complaint should only be denied if allowing the amendment would be futile³ or if there is undue delay, bad faith, or a dilatory motive by the party requesting leave to amend.⁴

Appellant provided to the district court sufficient facts to support her request to file an amended complaint. However, the district court's order of dismissal failed to address appellant's request to file an amended complaint, thus impliedly denying it.⁵ The district court abused its discretion by failing to allow appellant to file an amended complaint, as it would not be futile and there was no evidence of unnecessary delay or bad faith by appellant.

Respondents argue that no leave to amend was necessary because it would be futile. Respondents Karp and Evans assert that appellant waived her right to recover for any purported malpractice by voluntarily dismissing the underlying claim in which the malpractice allegedly occurred. This argument lacks merit. Appellant stated that she voluntarily dismissed the underlying action because she was unable to obtain new counsel after respondents withdrew and because she no longer

¹Allum v. Valley Bank of Nevada, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993).

²NRCP 15(a).

³Allum, 109 Nev. at 287, 849 P.2d at 302.

⁴Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973).

⁵See Bd. of Gallery of History v. Datecs Corp., 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000).

felt she could succeed on her claims, and she ascribed both of these reasons to respondents' malpractice. Therefore, this voluntary dismissal does not bar her malpractice suit, as there is no requirement that a party continue to pursue her case to an end if it would be futile.⁶

Next, Karp and Evans claim that the action is barred by the statute of limitation. This argument is incorrect, as we have consistently held that, in litigation malpractice actions, "damages do not begin to accrue until the underlying legal action has been resolved."⁷ As appellant filed her complaint within the statute of limitation time period following the order that granted the stipulated dismissal in the underlying case, which constituted the resolution of the underlying action, her complaint against respondents is not barred under the statute of limitation.

Finally, Karp and Evans argue that the district court properly denied appellant's request to file an amended complaint because appellant never provided a draft of the amended complaint. However, while the local court rules in some districts make this a requirement in order to gain leave to file an amended complaint, no such requirement is contained in the local rules for the Second Judicial District. Thus, this argument lacks merit.

Respondent Cannon-Lynch argues that an amended complaint would be futile because appellant failed to set forth any facts in her


⁶Cf. Hewitt v. Allen, 118 Nev. 216, 43 P.3d 345 (2002) (explaining that a litigant may voluntarily dismiss a futile appeal from the adverse ruling in the case in which the legal malpractice allegedly occurred without abandoning their legal malpractice action).

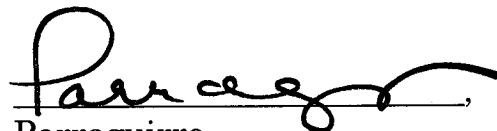
⁷Id. at 221, 43 P.3d at 348.

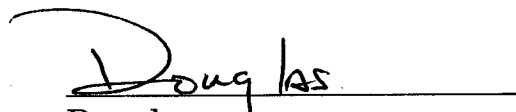
request that would constitute a valid claim against Cannon-Lynch. This argument also lacks merit, as appellant set forth several facts that could potentially provide an adequate showing of malpractice against Cannon-Lynch, particularly at this stage of the proceedings.⁸

Therefore, the district court abused its discretion by denying appellant's request for leave to file an amended complaint. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Maupin


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Janet J. Berry, District Judge
Robert Eisenberg, Settlement Judge
Brian R. Morris
Barber & Associates
Lewis Brisbois Bisgaard & Smith, LLP
Hal Taylor
Washoe District Court Clerk

⁸See Hall v. SSF, Inc., 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996).