

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENEE TURNER AND CLIFF  
TURNER, WIFE AND HUSBAND,  
Appellants,  
vs.  
RICHARD L. YOUNG, M.D.; AND THE  
ELKO CLINIC,  
Respondents.

No. 49891

**FILED**

MAY 22 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on remand, dismissing a medical malpractice action.<sup>1</sup> Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

In April 2001, appellants Renee and Cliff Turner filed a medical malpractice complaint with the Medical Dental Screening Panel (MDSP) against respondents Dr. Richard L. Young and The Elko Clinic and others. The Turners alleged that Dr. Young negligently removed Mrs. Turner's uterus by failing to obtain her informed consent to remove a healthy uterus. The MDSP found no "reasonable probability" of malpractice. Subsequently, the Turners filed a medical malpractice action in November 2002, in district court. The district court, however, dismissed the action because the Turners failed to provide an expert

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

affidavit to support the complaint's allegations, as NRS 41A.071 requires. The Turners appealed.

After reviewing that appeal, we remanded the matter to the district court for it to determine whether the Turners' allegations fall under one or more of the circumstances described in NRS 41A.100(1)(a)-(e), which generally describe when a rebuttable presumption of negligence arises, eliminating the need for a medical expert's affidavit. Upon remand, the district court determined that the allegations in the Turners' complaint did not fall within any of the situations enumerated in NRS 41A.100 and entered an order dismissing the Turners' complaint. This appeal followed.

Generally, a medical malpractice complaint must be supported by an appropriate affidavit from a medical expert or it is dismissed.<sup>2</sup> An affidavit may not be required, however, if the complaint's facts fall within circumstances enumerated in NRS 41A.100(1), when a rebuttable presumption of negligence arises.

Having reviewed the parties' briefs and record on appeal in light of those principles, we conclude that the district court properly dismissed the Turners' complaint for their failure to attach a medical expert's affidavit to their complaint.<sup>3</sup> In particular, the Turners contend that the allegations in their complaint that, based on Dr. Young's misdiagnosis, he performed a surgical procedure on the wrong organ because he removed a healthy uterus lacking fibroids, give rise to a

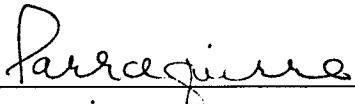
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<sup>2</sup>NRS 41A.071.

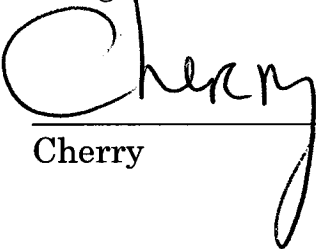
<sup>3</sup>See NRS 41A.071.

presumption of negligence. Based on the Turners' complaint, however, the essence of their allegations is not whether Dr. Young performed a surgical procedure on a wrong organ, but whether Dr. Young, exercising his medical judgment, misdiagnosed and removed an allegedly healthy organ. Thus, because the Turners failed to allege facts that fit within NRS 41A.100(1)(a)-(e), they were required to include a medical expert's affidavit with their complaint; under NRS 41A.071, their failure to do so mandated that their complaint be dismissed.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>4</sup>See Anderson v. Somberg, 338 A.2d 1, 7 (N.J. 1975) (recognizing that “an injury to an organ, when that organ was itself the object of medical attention,” does not by itself support a claim under the *res ipsa loquitor* doctrine) (citing Farber v. Olkon, 254 P.2d 520, 524 (Cal. Ct. App. 1953)).

<sup>5</sup>The Turners' arguments that NRS 41A.071's requirements violate Nevada's Constitution lack merit and were resolved in the Turners' earlier appeal. See Turner v. Young, Docket No. 43778 (Order of Remand, March 27, 2006).

cc: Hon. J. Michael Memeo, District Judge  
Cathy Valenta Weise, Settlement Judge  
David D. Loreman  
Schuering Zimmerman Scully Tweedy & Doyle LLP  
Elko County Clerk