

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN M. SALO, AN INDIVIDUAL,
Appellant,

vs.

ANTHONY BORGIA, DPM,
Respondent.

No. 50805

KEVIN M. SALO, AN INDIVIDUAL,
Appellant,

vs.

ANTHONY BORGIA, D.P.M.,
Respondent.

No. 50846

FILED

MAY 08 2009
TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER REGARDING MOTION AND
DISMISSING APPEAL IN DOCKET NO. 50846

These are consolidated appeals from district court orders dismissing medical malpractice complaints.

Currently before us is appellant's April 1, 2009, motion styled "NRAP 2 Motion to Suspend Rules and For Order Vacating District Court Order Dismissing Appellant's Complaint." According to appellant, the district court dismissed the medical malpractice action underlying the appeal in Docket No. 50805, based on appellant's failure to timely attach to his complaint a medical expert's affidavit supporting his allegations, as set forth in NRS 41A.071. Appellant then filed a new district court medical malpractice action, based on the same facts and with an affidavit, which the district court dismissed; the appeal from that matter was assigned Docket No. 50846.

In his April 1 motion, appellant contends that the parties and the district court overlooked the fact that NRS 41A.071 clearly does not apply to his medical malpractice claim because respondent, a podiatrist, is

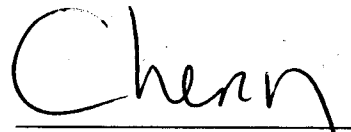
not a "physician" for NRS 41A.071 affidavit purposes. As a result, he asserts that the matter in Docket No. 50805 can be resolved without any further argument. Thus, in his April 1 motion, appellant makes several requests. He asks that we (1) suspend the Nevada Rules of Appellate Procedure for this matter, NRAP 2, so that it can be resolved without briefing and further review; (2) vacate the district court order dismissing his complaint challenged in Docket No. 50805; (3) determine that the district court proceedings underlying the appeal in Docket No. 50846 are irrelevant to the district court proceedings underlying Docket No. 50805 "for claims of res judicata or otherwise" and dismiss the appeal in Docket No. 50846; and (4) remand the matter in Docket No. 50805 for further proceedings. Respondent opposes the motion.

With respect to appellant's first, second, and fourth requests, they essentially amount to a request that we summarily reverse and remand the district court's decision in Docket No. 50805 based on appellant's contention that the district court obviously erred when it dismissed his complaint based on NRS 41A.071's affidavit requirement because NRS 41A.071 does not apply to his complaint. Whether NRS 41A.071 applies to appellant's action and whether the district court erred in dismissing appellant's complaint, however, are issues to be decided based on the parties' pertinent briefing. Accordingly, we deny appellant's motion with respect to his first, second, and fourth requests.

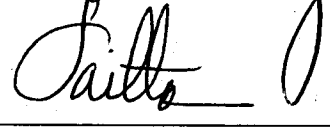
Appellant, in his third request, has moved to voluntarily dismiss the appeal in Docket No. 50846, with each side to bear its own costs and attorney fees. Since appellant's opening brief in these matters does not contain argument concerning the merits of the appeal in Docket No. 50846, we conclude that appellant has abandoned his appeal in that

docket, NRAP 31(c), and we therefore grant his request for voluntary dismissal. Accordingly, we dismiss the appeal in Docket No. 50846. The parties shall bear their own costs and fees. NRAP 42(b). To the extent that appellant asks us to determine that the district court case at issue in Docket No. 50846 is irrelevant to the district court proceedings underlying Docket No. 50805 "for claims of res judicata or otherwise," we deny that request as the issue is not properly before us at this time.

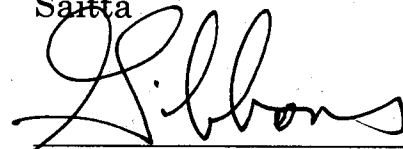
It is so ORDERED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Hon. Timothy C. Williams, District Judge
M. Nelson Segel, Settlement Judge
Dan Winder
Mandelbaum, Schwarz, Ellerton & McBride
Nall & Miller, LLP
Eighth District Court Clerk