IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHLEEN JOHNSON-DINSMORE,
Appellant,
vs.
ROBERT D. VANNAH, ESQUIRE;
ROBERT D. VANNAH, CHARTERED;
AND VANNAH & VANNAH, AN
ASSOCIATION OF ATTORNEYS
INCLUDING PROFESSIONAL
CORPORATIONS,
Respondents.

No. 51854

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a contract action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

As the parties are familiar with the facts of this case, we do not recount them except as necessary to our disposition. Because the facts are not in dispute, our sole determination in this matter is whether the district court erred as a matter of law in finding that NRS 7.095 does not apply retroactively to the contingency-fee agreement between appellant Kathleen Johnson-Dinsmore and respondent Robert D. Vannah. For the reasons set forth below, we affirm the district court's order granting summary judgment.

Standard of review

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact

[remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (alteration in original) (quoting NRCP 56(c)).

The contingency-fee agreement was enforceable

Johnson-Dinsmore argues that in temporarily substituting John B. Shook as her attorney, the contingency-fee agreement that she originally entered into with Vannah was terminated. She does not assert, however, that the district court erred as a matter of law when it enforced the contingency-fee agreement or that the agreement's enforceability was a material question of fact to be determined at trial. It is the responsibility of the appellant, and not this court, to determine the issues presented for review in an appeal. See NRAP 28(a)(4). Johnson-Dinsmore also presents a conclusory argument without citations to relevant authority.[1] Accordingly, we conclude that the district court did not err when it enforced the parties' original contingency-fee agreement. SIIS v. Buckley, 100 Nev. 376, 382, 682 P.2d 1387, 1390 (1984) (this court need not consider conclusory arguments unsupported by legal authority).

NRS 7.095 applies prospectively

Johnson-Dinsmore contends that the district court erred as a matter of law when it concluded that NRS 7.095 does not apply retroactively to her contingency-fee agreement with Vannah. She makes

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[1]Johnson-Dinsmore's sole authority cited is Nevada Rule of Professional Conduct (RPC) 1.5(c), which governs contingency fees. We note that this rule does not support the proposition that substituting Shook terminated the contingency-fee agreement that Johnson-Dinsmore initially entered into with Vannah. Furthermore, the contingency-fee agreement that the parties entered into meets the requirements of RPC 1.5(c).

two arguments in this regard: (1) that the plain meaning of "contract for or collect" in NRS 7.095 dictates that the initiative was intended to apply to cases pending on the effective date of the initiative and (2) that because certain sections of the initiative specifically state that they are to be prospective, the remaining sections, including NRS 7.095, were intended to be retroactive. (Emphasis added.) We conclude that Johnson-Dinsmore's arguments are without merit.

"This court reviews issues of statutory construction de novo." Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 641, 81 P.3d 532, 534 (2003). "[S]tatutes are presumed to operate prospectively and shall not apply retrospectively unless they are so strong, clear and imperative that they can have no other meaning or unless the intent of the legislature cannot be otherwise satisfied." Holloway v. Barrett, 87 Nev. 385, 390, 487 P.2d 501, 504 (1971). This general presumption, however, "does not apply to statutes relating merely to remedies and modes of procedure." T. R. G. E. Co. v. Durham, 38 Nev. 311, 316, 149 P. 61, 62 (1915).

We first note that NRS 7.095 does not relate to remedies or modes of procedure. Therefore, we presume that NRS 7.095 is to operate prospectively unless it is "so strong, clear and imperative that [it] can have no other meaning or unless the intent of the legislature cannot be otherwise satisfied." Holloway, 87 Nev. at 390, 487 P.2d at 504.

There is no specific language in NRS 7.095 indicating that the drafters intended it to apply retrospectively. The phrase "contract for or collect" is not a clear manifestation of intent that NRS 7.095 is to apply retroactively. Further, we cannot imply that NRS 7.095 was intended to be applied retroactively from the fact that certain sections of the initiative specifically stated that they are to be applied prospectively. To do so

would be to ignore the standard that the statute must be strong, clear, and imperative regarding retrospective application.

Further, "[i]t is a well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded." Wienholz v. Kaiser Foundation Hospitals, 267 Cal. Rptr. 1, 3 (Ct. App. 1989). If the drafters were able to specifically state that some provisions were to apply prospectively, then they had the ability to specifically state that other provisions were to apply retroactively. See Public Employees' Benefits Prog. v. LVMPD, 124 Nev. ____, ____, 179 P.3d 542, 553 (2008) (noting that the Legislature is capable of clearly stating when a statute should apply retroactively).

Also, we cannot conclude that retroactive application is necessary to satisfy the drafters' intent. NRS 7.095 places limitations on attorney contingency fees in medical malpractice cases. Prospective application advances that purpose, despite the fact that contingency fees in cases commenced prior to the adoption of NRS 7.095 may be distributed according to pre-NRS 7.095 limitations.

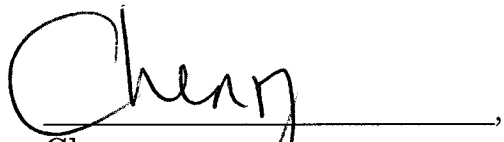
Our holding is also supported by Wienholz. In Wienholz, the California Court of Appeal considered an identical issue: whether a statutory amendment to a contingency-fee statute should apply retroactively to cases pending, but not yet resolved, at the time of the amendment. 267 Cal. Rptr. at 1. The Court of Appeal reached the same conclusion—the amendment was not intended to operate retroactively. Id. at 1-2. It applied the same general presumption of prospective application and found it noteworthy, as do we, that there was nothing in the language

of the amendment indicating a legislative intent of retrospective application. Id. at 3.

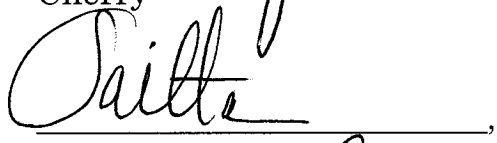
Moreover, the present case is distinguishable from Madera v. SIIS, 114 Nev. 253, 956 P.2d 117 (1998). In Madera, this court concluded that the statue at issue in that case was "restricted in its effect to remedies available and [did] not abridge vested rights." Id. at 258, 956 P.2d at 120. Therefore, this court concluded that the general presumption of prospective application did not apply. Id. On the contrary, NRS 7.095 does not involve remedies or procedure, and therefore, the statute is "presumed to operate prospectively" absent a clear manifestation that it apply retrospectively. Holloway, 87 Nev. at 390, 487 P.2d at 504.

Therefore, we conclude that the district court did not err as a matter of law in finding that NRS 7.095 does not apply retroactively to Johnson-Dinsmore's contingency-fee agreement with Vannah. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



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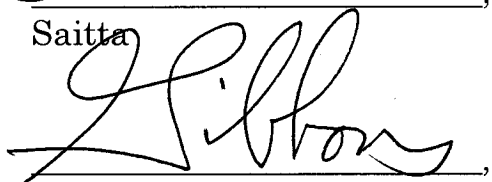

_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Larry J. Cohen, Settlement Judge
Law Office of Vernon L. Bailey
Vannah & Vannah
Eighth District Court Clerk