

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIGA HRALIMA,  
Appellant,  
vs.  
M. JEROME WRIGHT, ESQ.,  
Respondent.

No. 52616

**FILED**

**MAY 08 2009**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a tort action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Maiga Hralima filed a complaint in district court on March 12, 2008, against respondent M. Jerome Wright, Esq., asserting malpractice and negligence causes of action based on Wright's legal representation of Hralima in criminal and appellate proceedings from July 2002 to January 2006, when Wright's motion to withdraw as counsel for Hralima was granted. On July 9, 2008, Hralima filed a notice of return summons and due diligence affidavit, which asserted that service of his complaint had been unsuccessful. Thereafter, on July 14, 2008, Wright filed a motion to dismiss Hralima's complaint based on the statute of limitations. Hralima filed a motion for default judgment and summary judgment in his favor on July 23, 2008, but he did not file an opposition to Wright's motion to dismiss. In its October 9, 2008, order, the district court

granted Wright's motion to dismiss. On appeal, Hralima argues that the district court erred in dismissing his complaint.<sup>1</sup>

If an action is barred by the statute of limitations, a court may dismiss the complaint for failure to state a claim upon which relief can be granted. Bemis v. Estate of Bemis, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998); NRCP 12(b)(5). Accordingly, we review a district court order dismissing a complaint based on the statute of limitations under a rigorous standard of review. Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). For this purpose, a complaint's factual allegations are liberally construed, with every fair inference drawn in favor of the nonmoving party. Id. Unless it appears to a certainty that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed. Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 22, 62 P.3d 720, 734 (2003).

Hralima's complaint alleges malpractice, negligence, criminal negligence, and intentional torts as causes of action. Under NRS 11.190(4)(e), the statute of limitations for actions to recover damages for injuries to a person caused by the wrongful act or neglect of another is two years. Hralima's alleged negligence, criminal negligence, and intentional tort causes of action are therefore subject to the two-year statute of

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<sup>1</sup>Hralima's arguments that the district court erred in allowing Wright to file a motion to dismiss in the district court because Wright had not been properly served with Hralima's complaint and that he had never received a copy of Wright's motion to dismiss have been considered. In light of Wright's right to waive proper service and the certificate of service upon Hralima attached to Wright's motion to dismiss, Hralima's arguments are determined to be without merit.

limitations. Because Wright's legal representation of Hralima ended at the very latest in January 2006 and Hralima did not file his complaint until March 2008, those actions are time barred and were properly dismissed, as they do not state a claim on which relief can be granted.

Hralima's remaining cause of action, that of malpractice, is not yet ripe. In its order dismissing Hralima's complaint, the district court properly stated that a legal malpractice cause of action raised by a criminal defendant does not accrue or become actionable until appellate or post-conviction relief has been granted to the party claiming malpractice. Clark v. Robison, 113 Nev. 949, 944 P.2d 788 (1997). Prior to obtaining such relief, a malpractice cause of action lacks the essential element of proximate causation and would not survive a motion to dismiss or for summary judgment. Id. at 952, 944 P.2d at 790. According to the documents submitted by Hralima, all of his requests for appellate and post-conviction relief to date have been denied. Because Hralima's malpractice cause of action lacks the element of proximate cause, and is therefore not ripe, it was properly dismissed.

As none of Hralima's causes of action stated a claim on which relief could be granted, the district court properly granted Wright's motion to dismiss. We therefore

ORDER the judgment of the district court AFFIRMED.

1 Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Pickering, J.  
Pickering

cc: Hon. Connie J. Steinheimer, District Judge  
Maiga Hralima  
M. Jerome Wright  
Washoe District Court Clerk