

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUART M. HOFFMAN, M.D.,
Appellant,
vs.
SPRING VALLEY HOSPITAL AND
MEDICAL CENTER,
Respondent.

No. 52813

FILED

JUN 22 2010

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 summary judgment in a contracts and torts action. Eighth Judicial District Court, Clark County; David Wall, Judge.

This case arises out of a dispute between Dr. Stuart Hoffman and Spring Valley Hospital and Medical Center. Based on a peer review committee's recommendation, Spring Valley suspended Hoffman's medical privileges. Hoffman then met with a Medical Executive Committee and a Fair Hearing Panel. The panel, however, did not complete a fair hearing because the parties agreed to negotiate a settlement. The parties then executed a settlement agreement that contained a forum selection clause and an "Exhibit A." This exhibit set forth specific language that Spring Valley agreed to submit to the National Practitioner Data Bank pursuant to the federal Health Care Quality Improvement Act (HCQIA).

When Spring Valley submitted a report to the data bank, the report included language in addition to that set forth in Exhibit A. Hoffman disagreed with the submission of this additional language and filed a complaint against Spring Valley in district court. His complaint included several claims: rescission, breach of contract, breach of the implied covenant of good faith and fair dealing, defamation per se, and declaratory relief. Spring Valley answered this complaint and moved for summary judgment. In the summary judgment motion, Spring Valley

argued that it submitted the data bank report in compliance with the HCQIA and the HCQIA preempted any state action requiring Spring Valley to act contrary to the reporting requirements. The district court granted Spring Valley's motion for summary judgment, concluding that the HCQIA preempted all of Hoffman's state law claims. Hoffman now appeals, arguing that the HCQIA does not preempt all of his state law claims.

For the reasons set forth below, we conclude that the district court erred by dismissing Hoffman's entire lawsuit because the HCQIA does not preempt his cause of action for rescission. We, however, decline to address the issue of whether the HCQIA preempts Hoffman's other causes of action because their preemption is arguably influenced by the outcome of the rescission claim. We reverse and remand this matter to the district court so that it may further address this issue and develop the record. Since the parties are familiar with the facts and procedural history of this case, we do not recount them further except as necessary for our disposition.

Standard of review

In this case, the district court granted Spring Valley's motion for summary judgment. Hoffman argues on appeal that the district court's order effectively operated as a dismissal under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. We conclude that Hoffman's argument lacks merit because the district court considered evidence outside the pleadings when reviewing the motion. Meyer v. Sunrise Hospital, 117 Nev. 313, 321, 22 P.3d 1142, 1148 (2001).

This court reviews a district court's grant of summary judgment de novo, without giving deference to the district court's findings. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). If the pleadings and other evidence do not demonstrate a genuine issue of

material fact and the moving party is entitled to judgment as a matter of law, then summary judgment is appropriate. Id.

The HCQIA does not preempt Hoffman's claim for rescission

In this case, the district court ruled that summary judgment was proper because the HCQIA preempted all of Hoffman's state law claims. The doctrine of preemption arises from the United States Constitution's Supremacy Clause. Nanopierce Tech. v. Depository Trust, 123 Nev. 362, 370, 168 P.3d 73, 79 (2007). The Supremacy Clause states, "This Constitution, and the Laws of the United States which shall be made Pursuance thereof . . . shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Under the Supremacy Clause, if state law conflicts with federal law, the federal law preempts the otherwise permissible state law. Nanopierce, 123 Nev. at 370, 168 P.3d at 79.

In the district court's order granting summary judgment, it cited to Diaz v. Provena Hospitals, 817 N.E.2d 206 (Ill. App. Ct. 2004). In Diaz, conflict preemption applied because the hospital could not comply with both the HCQIA's reporting provisions and the state district court's retraction and contempt orders. Id. at 213. Despite the ruling in Diaz, we conclude that the district court erred in this case because the HCQIA does not preempt Hoffman's claim for rescission.

When considering Hoffman's rescission claim, the case of Cohen v. State of Nevada, 113 Nev. 180, 930 P.2d 125 (1997), is relevant. In Cohen, the State violated an agreement with Robert Cohen when it denied his application for a gaming license based upon his past criminal record. Id. at 181, 930 P.2d at 126. Cohen responded by filing a lawsuit against the State urging that the parties' agreement was enforceable and that it barred the State from denying his gaming license based upon his

prior bad acts. Id. at 182, 930 P.2d at 126. However, the district court denied judicial review because the Nevada Gaming Commission has absolute power pursuant to Nevada law to approve and deny gaming licenses. Id. at 183, 930 P.2d at 127.


On appeal, this court reversed the district court's dismissal of Cohen's lawsuit. Id. at 181, 930 P.2d at 126. Although courts generally cannot review the gaming commission's approval or denial of a gaming license, they may nonetheless consider whether a party violated an agreement. Id. at 183-84, 930 P.2d 127. Based on this reasoning, this court reversed the dismissal of Cohen's lawsuit because he asked the court to order the State to abide by its contract, not to order the State to approve the gaming license. Id. at 184, 930 P.2d at 127. This court noted that the State had wide discretion as to whether to form a contractual relationship, but once it established such a relationship, it had the legal duty to conform to the agreement. Id.

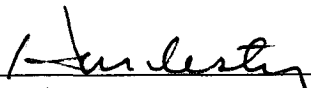
Like Cohen, we conclude that the district court's dismissal of Hoffman's claim for rescission was improper. Id. at 181, 930 P.2d at 126. Although the district court cannot order Spring Valley to violate the HCQIA's reporting provisions, it may review whether Spring Valley violated the parties' settlement agreement. See Cohen, 113 Nev. at 183-84, 930 P.2d at 127; Diaz, 817 N.E.2d at 213. This is because Hoffman's claim asks the district court to rescind an agreement, not to prevent Spring Valley from submitting a report to the data bank. See Cohen, 113 Nev. at 184, 930 P.2d at 127.

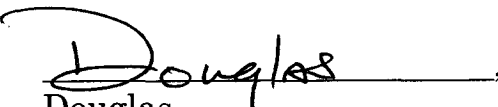
We also note that there are genuine issues of material fact with respect to Hoffman's rescission claim. Hoffman argues that the district court should rescind the settlement agreement because Spring Valley submitted a data bank report that was inconsistent with the agreement's letter, purpose, and intent. Alternatively, Spring Valley

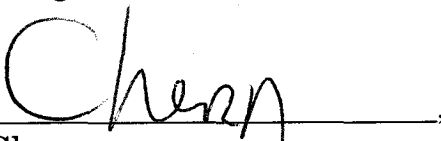
argues that the district court should not rescind the settlement agreement because it complied with the agreement's terms by incorporating Exhibit A's language in the data bank report. Therefore, an issue of material fact remains as the settlement agreement's terms are in dispute. Accordingly, we


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

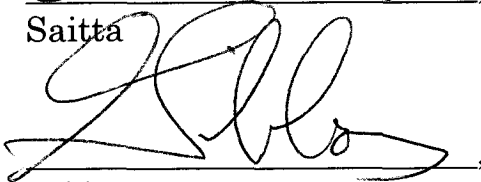
 C.J.
Parraguirre

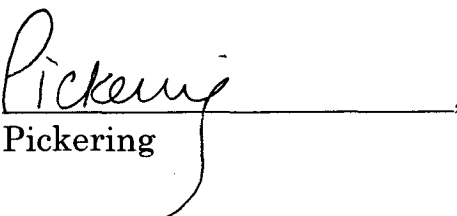
 J.
Hardesty

 J.
Douglas

 J.
Cherry

 J.
Saitta

 J.
Gibbons

 J.
Pickering

cc: Hon. David Wall, District Judge
Ara H. Shirinian, Settlement Judge
Holland & Hart LLP/Las Vegas
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk