

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRAY,

No. 34914

Appellant,

vs.

CHARLES JOHNSON AND/OR DAVID  
JOHNSON, TRUSTEE OF THE HOYT  
SIBLEY AND MARY SIBLEY 1973  
TRUST,

Respondents.

**FILED**

DEC 12 2001

MANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

DAVID WRAY,

No. 35027

Appellant,

vs.

CHARLES JOHNSON AND/OR DAVID  
JOHNSON, TRUSTEE OF THE HOYT  
SIBLEY AND MARY SIBLEY 1973  
TRUST,

Respondents.

ORDER OF AFFIRMANCE

In these consolidated appeals, James Wray and David Wray appeal from a grant of summary judgment in favor of respondents Charles Johnson and David Johnson. The district court's order dismissed the Wrays' legal malpractice and fraud claims against the Johnsons.

In 1973, Hoyt and Mary Sibley created a joint marital trust, drafted by respondent Charles Johnson. Charles Johnson drafted several trust amendments for the Sibleys, most recently in 1991. The final amended trust granted the surviving spouse, in the event of the other spouse's demise, a special power of appointment over the decedent spouse's contributions to the trust. The trust instrument contained no restrictions on the designation of beneficiaries pursuant to any exercise of the powers of appointment. Mary then executed a will, also drafted by Charles Johnson, leaving all of her property to the trust.

On July 28, 1991, Mary died. Hoyt died in 1997, having previously exercised the power of appointment. Appellants James and

David Wray, Mary's children by a previous marriage, were not named as beneficiaries.

In 1998, David and James Wray filed suit against respondents Charles Johnson and the current trustee, David Johnson, alleging legal malpractice in drafting Mary's estate plan. The Wrays asserted that Mary intended them to be beneficiaries under the trust, and that Charles Johnson committed malpractice in drafting the powers of appointment without providing for them. The Wrays later amended their complaint to include a fraud claim against Charles Johnson based on his pretrial deposition testimony.

In granting summary judgment, the district court ruled that NRS 11.207(1), the statute of limitation governing such matters, barred the Wrays' suit. The district court also found that the Wrays failed to allege or present evidence of the elements of fraud. James and David Wray timely filed separate appeals contesting this order, which have been consolidated.

We review de novo a district court's grant of summary judgment.<sup>1</sup> We conclude that Charles Johnson owed no duty to the Wrays to draft Mary's will in their favor. Although the district court did not rely on this ground, we can nevertheless affirm an order of summary judgment on any correct ground.<sup>2</sup> Nevada law requires a plaintiff in a legal malpractice action to prove the existence of an attorney-client relationship and a duty owed to the plaintiff.<sup>3</sup> ~~The Wrays presented no evidence establishing such a relationship or duty here. Accordingly, an estate-planning attorney owes no duty to potential beneficiaries with whom no attorney-client relationship exists.~~ Even assuming without deciding, that an estate-planning attorney owes a duty to potential beneficiaries under certain circumstances, we conclude that appellants presented no evidence establishing the existence of such a duty in this case.

**(Order corrected per order filed on April 3, 2002.)**

<sup>1</sup>Coury v. Robison, 115 Nev. 84, 88, 976 P.2d 518, 520 (1999) (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992)).


<sup>2</sup>See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (citing Hotel Riviera, Inc. v. Torres, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981)).

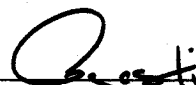
<sup>3</sup>See Day v. Zubel, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996) (citing Sorenson v. Pavlikowski, 94 Nev. 440, 443, 581 P.2d 851, 853 (1978)).

Further, assuming such a duty existed, the district court correctly found that NRS 11.207(1) barred these actions. NRS 11.207(1) provides that a claim for legal malpractice must be brought within two years from the date the plaintiff discovered or should have discovered the injury, or four years from the date of injury, whichever occurs first.<sup>4</sup> The Wrays were aware of the alleged defect in Mary's estate plan shortly after her demise in 1991. The 1998 action was therefore barred.

We have considered the Wrays' remaining arguments and find no merit to them. We therefore

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C. J.  
Maupin

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Allan R. Earl, District Judge  
James H. Wray III  
David Wray  
Edwards, Hale, Sturman, Atkin & Cushing, Ltd.  
Lionel Sawyer & Collins  
Clark County Clerk

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<sup>4</sup>See Charleson v. Hardesty, 108 Nev. 878, 883, 839 P.2d 1303, 1307 (1992).