

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE HALL,
Appellant,
vs.
DENNIS MYRON LEAVITT AND
LEAVITT LAW FIRM,
Respondents.

No. 54693

FILED

NOV 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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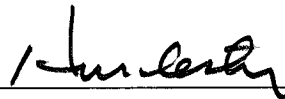
ORDER OF REVERSAL AND REMAND

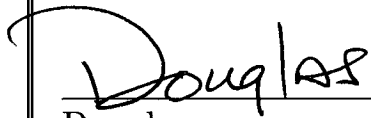
This is a proper person appeal from a district court dismissal of a legal malpractice action and the subsequent denial of appellant's NRCP 59(e) motion to alter or amend the judgment. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.


A district court order granting an NRCP 12(b)(5) motion to dismiss is subject to rigorous appellate review. Lubin v. Kunin, 117 Nev. 107, 110-11, 17 P.3d 422, 425 (2001). Here, respondents assert that the district court correctly dismissed appellant's complaint because the statute of limitations for her claims expired on December 19, 2008, and she did not file her complaint until January 27, 2009. Appellant's documentation establishes, however, that on December 17, 2008, appellant submitted for filing her application to proceed in forma pauperis in the district court. Appellant further contends, and respondents do not dispute, that appellant also submitted her complaint on that date. Thus, although the district court clerk improperly failed to file the in forma pauperis application or stamp the complaint received, the actual date of receipt by the district court clerk, December 17, 2008, was the proper date for determining whether appellant's complaint was timely. See Sullivan v.

District Court, 111 Nev. 1367, 1369, 1371, 904 P.2d 1039, 1040, 1042 (1995) (explaining that the district court has a statutory duty to file an in forma pauperis application submitted for filing and that the actual date of receipt of a complaint by the clerk is the date to be considered for purposes of the statute of limitations). Because appellant's complaint was effectively filed within the two-year statute of limitations, the district court erred by dismissing it as time-barred. See NRS 11.207(1). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Stefany Miley, District Judge
Vickie Hall
Leavitt Law Firm
Eighth District Court Clerk

¹Given that appellant's reply brief has already been filed in this appeal, appellant's May 14, 2010, motion for leave to file documents in proper person is denied as moot.