IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES RODRIGUES, JR., AND BRAYSEN RODRIGUES, A MINOR BY AND THROUGH HIS GUARDIAN AD LITEM JAMES RODRIGUES, SR.,
Appellants,
vs.
RICHARD D. WASHINSKY, M.D. AND SHAHEEN N. CHOWDHRY, M.D.,
Respondents.

No. 55214

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a medical malpractice action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In 2009, appellants James Jr. and Braysen Rodrigues filed a medical malpractice lawsuit against respondents Richard Washinsky and Shaheen Chowdhry, alleging that respondents negligently caused the 2003 death of appellants' mother. Respondents filed motions to dismiss, contending that appellants' claim was time-barred by NRS 41A.097, Nevada's statute of limitations governing medical malpractice actions.

The district court granted respondents' motions, concluding that appellants' claim was time-barred by NRS 41A.097(2)'s three-year limitations period. On appeal, appellants contend that the district court erred in granting respondents' motions because: (1) by complying with

NRS 41A.097(2)'s two-year period for discovering an injury, they did not need to comply with NRS 41A.097(2)'s three-year limitations period; (2) appellants should have been granted additional time to conduct discovery in order to determine whether respondents concealed their negligence; and (3) NRS 41A.097's lack of a minority tolling provision violates appellants' equal-protection rights. As explained below, we affirm the ruling of the district court.[1]

Standard of review

Because the district court considered evidence outside of the pleadings in granting respondents' motions to dismiss, we treat each dismissal order as an order granting summary judgment. Witherow v. State, Bd. of Parole Comm'rs, 123 Nev. 305, 307-08, 167 P.3d 408, 409 (2007).

We review an appeal from an order granting summary judgment de novo. 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) (quotation omitted).

[1]The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

NRS 41A.097 mandates compliance with both the three-year limitations period and the two-year discovery period

Appellants contend that they have complied with NRS 41A.097 because they filed suit within two years of when they "discovered" their injury. See Massey v. Litton, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983) (explaining that a plaintiff "discovers" his injury "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on inquiry notice of his cause of action"). In relevant part, NRS 41A.097 provides as follows:

> [A]n action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first[.]

NRS 41A.097(2) (emphases added).[2]

By its terms, NRS 41A.097(2) requires compliance with both the two-year discovery period and the three-year limitations period. See Hills v. Aronsohn, 199 Cal. Rptr. 816, 819 (Ct. App. 1984) (construing California's analogue to NRS 41A.097 and reiterating that the statute "establishes two hurdles, not one, to the timely maintenance of a medical malpractice claim").

Appellants acknowledge that their injury in this case was the alleged wrongful death of their mother, which occurred in 2003. Cf. Pope

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[2]NRS 41A.097(2)'s two-year period for discovering an injury was amended to its current length of one year in 2004 by initiative petition. Nevada Ballot Questions 2004, Nevada Secretary of State, Question No. 3. Because appellants' injury occurred prior to 2004, the two-year period applies in this case.

v. Gray, 104 Nev. 358, 363, 760 P.2d 763, 765 (1988) ("The death of the decedent being an essential element of the cause of action for wrongful death, there can be no legal injury until the death has occurred." (quotation omitted)). Consequently, by filing suit in 2009, their claim is barred by the plain language of NRS 41A.097—regardless of when appellants may have discovered their injury.

The district court properly granted respondents' motions to dismiss without first allowing appellants to conduct additional discovery

NRS 41A.097(3) provides that NRS 41A.097(2)'s three-year limitations period is tolled during any period in which "the provider of health care has concealed any act, error or omission upon which the action is based." Appellants requested that the district court grant them additional time to conduct discovery in order to establish whether respondents had concealed their negligence, thereby providing a basis for tolling the limitations period. The district court denied this request. Appellants contend that this was improper. We disagree.

NRS 41A.097(3) operates to toll the running of the limitations period only for the time during which a defendant's conduct hinders a would-be plaintiff from discovering his or her injury. Black's Law Dictionary 327 (9th ed. 2009) (defining concealment as "an act by which one prevents or hinders the discovery of something"); cf. Garneau v. Bush, 838 N.E.2d 1134, 1143 (Ind. Ct. App. 2005) (concluding that plaintiffs needed to show that a defendant's concealment "somehow prevented them . . . from discovering a potential cause of action"); Smith v. Boyett, 908 P.2d 508, 513 (Colo. 1995) (concluding that plaintiffs needed to show that the defendant's concealment "impeded [plaintiffs'] discovery of th[e] negligence" that contributed to the injury).

Here, appellants did not seek out either respondent until 2008 when they deposed respondents in connection with appellants' separate negligence suit. Accordingly, neither respondent did anything that could have potentially hindered appellants from discovering their injury until well after the three-year limitations period had already elapsed.[3] The district court therefore properly granted respondents' motions to dismiss without first allowing appellants to conduct additional discovery.

NRS 41A.097's lack of a minority tolling provision does not violate appellants' equal-protection rights

Appellants contend that NRS 41A.097 violates the Equal Protection Clause of the 14th Amendment because it treats one class of people (minors) differently from another class of people (non-minors). Specifically, they contend that NRS 41A.097, by failing to toll the limitations period during a plaintiff's minority, unfairly discriminates against minors in favor of non-minors because NRS 41A.097's practical effect is to cut off minors' causes of action before they may be competent to file suit. We disagree.

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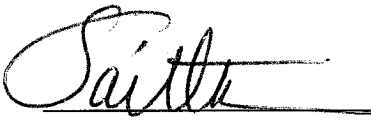
[3]We note that any conduct by the defendants in appellants' separate negligence suit could not have provided a basis for tolling the limitations period as to the respondents in this case. See Jensen v. IHC Hospitals, Inc., 82 P.3d 1076, 1083 (Utah 2003) ("[T]he alleged fraud of one defendant generally cannot be imputed to another defendant for tolling purposes when the other defendant did not participate in the alleged fraud."); Brown v. Bleiberg, 651 P.2d 815, 821 (Cal. 1982) (refusing to toll a medical malpractice statute of limitations as to one defendant when the only alleged concealment was by a different defendant).

This court applies one of two levels of scrutiny when reviewing an equal-protection challenge: "strict scrutiny" or "rational basis" review. Tarango v. SIIS, 117 Nev. 444, 454-55, 25 P.3d 175, 182 (2001). We apply strict scrutiny to an equal-protection challenge only when a suspect classification, such as race or alienage, is at stake. Id. at 454, 25 P.3d at 182. Neither the United States Supreme Court nor this court has recognized age as a suspect classification. Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 313-14 (1976) (applying rational-basis review to an age-based equal-protection challenge). Consequently, appellants' equal-protection challenge is subject to rational-basis review.

In conducting rational-basis review, this court examines whether the challenged classification "is rationally related to a legitimate government interest." Tarango, 117 Nev. at 455, 25 P.3d at 182. Here, NRS 41A.097 was enacted as part of an effort to attract qualified doctors to the state of Nevada and to keep existing Nevada doctors from moving elsewhere. See Hearing on A.B. 303 Before the Senate Judiciary Comm., 56th Leg. (Nev., April 1, 1971) (discussing the correlation between a doctor's cost of obtaining malpractice insurance in a particular area and the statute-of-limitations period in that area).

Attracting qualified doctors to Nevada is a legitimate government interest, and the Legislature's decision to not include a minority tolling provision in NRS 41A.097 was rationally related to this legitimate interest. Consequently, appellants' equal-protection challenge fails, and we therefore

ORDER the judgment of the district court AFFIRMED.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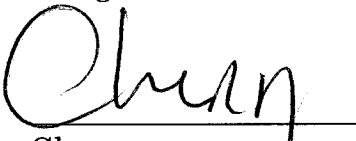
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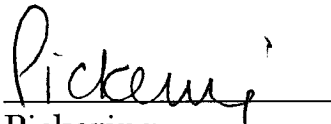
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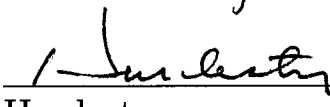
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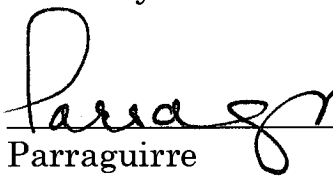
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Parraguirre

cc: Hon. Valerie Adair, District Judge
Dana Jonathon Nitz, Settlement Judge
Michael J. Amador
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
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Eighth District Court Clerk