IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD SOUSSANA, AN INDIVIDUAL,
Appellant,
vs.
YAKOV SHAPOSHNIKOV, M.D.,
Respondent.

No. 56117

ORDER OF AFFIRMANCE

Appellant Richard Soussana sued his doctor, respondent Yakov Shaposhnikov, and a medical device manufacturer, Given Imaging, seeking to establish damage claims for medical malpractice and products liability against each. The procedure giving rise to the claims occurred on July 8, 2005; Soussana did not file suit until June 16, 2008. The district court granted Shaposhnikov summary judgment based on the statute of limitations having run. Eighth Judicial District Court, Clark County; David B. Barker, Judge. We affirm.

First summary judgment

Given Imaging is no longer a party to the suit. It was granted summary judgment by a predecessor district court judge on statute-of-limitations grounds. The order granting Given Imaging summary judgment found as an undisputed material fact that, "[o]n or about July 26, 2005," three weeks after the procedure, "Plaintiff reported to Dr. Shaposhnikov with complaints of bloating. Plaintiff continued to suffer from stomach pain and knew or should have known that the pain could be associated with the PillCam" procedure. This finding became the basis for the court's legal conclusion that, as to Given Imaging, "Plaintiff's claims are barred by the applicable statute of limitations. The statute had

expired as to Plaintiff's claims against GIVEN prior to the initiation of this dispute." The summary judgment as to Given Imaging was certified as final under NRCP 54(b) and not appealed.

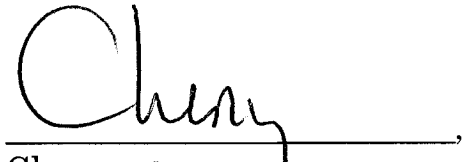
Second summary judgment

Time passed, the case was reassigned to a different district court judge, and Dr. Shaposhnikov moved for summary judgment. Relying on the unappealed, certified-as-final summary judgment in favor of Given Imaging, in particular, its determination that Soussana "knew or should have known" by July 26, 2005, that his pain could be associated with the July 8, 2005, procedure, Shaposhnikov argued that Soussana's medical malpractice claims were barred by the statute of limitations in NRS 41A.097. The district court agreed and granted summary judgment in Shaposhnikov's favor. Soussana appeals.

Whether denominated law of the case, collateral estoppel, or issue preclusion, the issue of when Soussana knew or should have known of his injury (July 26, 2005, as opposed to the June 16, 2007, surgery date to remove and repair the effects of the PillCam) was actually litigated and finally determined against him by the first summary judgment order. This determination carried over to the second summary judgment proceeding. Compare Elyousef v. O'Reilly & Ferrario, LLC, 126 Nev. ___, ___, ___, 245 P.3d 547, 548, 550 (2010) ("[s]ummary judgment is appropriate where issue preclusion bars a claim") with Shamley v. ITT Corp., 869 F.2d 167, 170 (2d Cir. 1989) (issue preclusion applies to final judgments under Fed. R. Civ. P. 54(b), which parallels NRCP 54(b)); see also Moore v. Jas. H. Matthews & Co., 682 F.2d 830, 833 (9th Cir. 1982) ("[t]he 'law of the case' rule ordinarily precludes a court from re-examining an issue previously decided by the same court, or a higher appellate court,

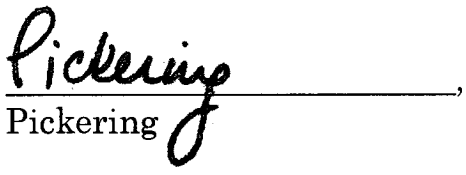
in the same case").[1] Of note, Soussana makes no argument of concealment by Shaposhnikov and concedes that Shaposhnikov did not see or treat Soussana after July 26, 2005 (Shaposhnikov says February of 2006, but this does not change the analysis). While the elements of a products liability claim differ from those of a medical malpractice claim, Soussana nonetheless fails to identify any basis in law or fact for avoiding the finding that he knew or should have known of his injury by July 26, 2005.

We therefore affirm.



_____, J.
Cherry

_____, J.
Gibbons



_____, J.
Pickering

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[1]Citing Byford v. State, 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000), Soussana argues that in Nevada, the law-of-the-case doctrine does not apply to district court decisions, only to appellate decisions. Whether Byford conflated the much narrower law-of-the-mandate doctrine, which only applies to appellate determinations, with conventional law-of-the-case doctrine, which conventionally applies to trial court determinations, see 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4478.1 (2d ed. 2002), need not be decided on this appeal, since the NRCP 54(b) certification and lack of an appeal make collateral estoppel, now known as issue preclusion, applicable.

cc: Hon. David B. Barker, District Judge
William C. Turner, Settlement Judge
Tricano Law Office
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk