IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD SCOTT ROSE AND LISA ROSE AS THE NATURAL PARENTS AND GUARDIANS OF JUSTIN ROSE, A MINOR CHILD,
Appellants,
vs.
DAVID E. HALD, M.D.,
Respondent.

No. 56453

FILED

NOV 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a medical malpractice action, certified as final pursuant to NRCP 54(b). Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Justin Rose, a minor, suffers from abnormal bladder and kidney functions. Justin, by and through his parents Richard and Lisa Rose (collectively, the Roses), filed a claim for medical malpractice on August 2, 2004, alleging that Justin suffers from a congenital condition that was made worse by respondent Dr. David E. Hald's misdiagnosis. Dr. Hald treated Justin from December 31, 1997, to March 31, 1999.

Dr. Hald filed a motion to dismiss the claim or, in the alternative, for summary judgment alleging that the claim against him was barred by the statute of limitations in NRS 41A.097(1). The Roses opposed the motion, arguing that NRS 41A.097(1) did not bar their claim because they discovered Dr. Hald's negligence exactly two years before they filed their action. They also argued that even if NRS 41A.097(1) did bar their claim, Justin had the right to bring the claim under NRS 41A.097(4). NRS 41A.097(4) allows a minor to bring a claim against a health care provider for a birth defect if the minor is under the age of ten and his or her parents failed to bring a claim on his or her behalf. The

district court dismissed the claim, concluding that Justin's claim was barred by NRS 41A.097(1) and not saved by NRS 41A.097(4) because Dr. Hald did not cause Justin's condition.

The Roses now appeal, arguing that the district court erred in concluding that their medical malpractice claim was time-barred under NRS 41A.097(1) and that NRS 41A.097(4) requires a causal connection between the birth defect and the health care provider's negligence. We hold that the district court properly determined that the statute of limitations in NRS 41A.097(1) bars this claim and that NRS 41A.097(4) does not apply because there was no causal connection between Justin's condition and Dr. Hald's care of Justin. Thus, we affirm the district court's order granting summary judgment. Because the parties are familiar with the facts and procedural history of this case, we do not recount them further except as is necessary for our disposition.

NRS 41A.097(1) bars the Roses' claim

The Roses argue that NRS 41A.097(1) does not bar their claim because they filed the claim within two years of discovering Justin's condition. We disagree.

NRS 41A.097(1) provides that "an action for injury or death against a provider of health care may not be commenced more than 4 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." The term "injury" in NRS 41A.097(1) refers to a legal injury, which requires not only the discovery of the medical condition but also the apprehension that the medical condition was caused by a health care provider's negligence. Massey v. Litton, 99 Nev. 723, 726-27, 669 P.2d 248, 251 (1983).

If an action is barred by the statute of limitations, the district court can dismiss the complaint under NRCP 12(b)(5). Bemis v. Estate of

Bemis, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998). If a motion to dismiss is made under NRCP 12(b)(5) and matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as a summary judgment motion. Linthicum v. Rudi, 122 Nev. 1452, 1455, 148 P.3d 746, 748 (2006). Summary judgment is reviewed de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A court may grant summary judgment if the evidence does not create a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. If the court considers a motion for summary judgment, it must view the evidence and any reasonable inferences in the light most favorable to the nonmoving party. Id. When the face of the pleading shows that the claim is time-barred, the burden falls to the plaintiff to demonstrate that the bar does not exist. Bank of Nevada v. Friedman, 82 Nev. 417, 422, 420 P.2d 1, 4 (1966).

The Roses filed their medical malpractice claim more than four years after Justin's injury occurred. The Roses argue that they did not discover Justin's condition until less than two years before they filed their claim. However, the Roses concede that Justin's condition is the result of a birth defect not caused by Dr. Hald's negligence.[1] Further, even if Dr. Hald caused Justin's injury, the Roses did not file their medical malpractice claim until August 2, 2004, more than four years after Dr. Hald last treated Justin. Accordingly, the Roses' medical malpractice claim is barred under the four-year statute of limitations found in NRS

[1]The Roses allege that Dr. Hald was negligent in the treatment of the birth defect. However, this injury occurred more than four years before the complaint was filed.

41A.097(1). Thus, the district court did not err in granting Dr. Hald summary judgment pursuant to NRS 41A.097(1).

NRS 41A.097(4) does not apply because Dr. Hald is not alleged to have caused the birth defect

The Roses also argue that the district court misinterpreted NRS 41A.097(4) when determining that the lack of a causal connection between Justin's birth defect and Dr. Hald's medical care barred Justin's claim under NRS 41A.097(4). We disagree.

> NRS 41A.097(4) provides, in pertinent part:
>
> If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:
>
> (a) [b]rain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

We review the interpretation of a statute de novo because it is a question of law. Irving v. Irving, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). We will not look past the plain language of the statute unless it is ambiguous, in which case we will construe the language "in accordance 'with what reason and public policy would indicate the legislature intended.'" Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (quoting State v. Quinn, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001)). "No part of a statute should be rendered meaningless, and this court will not read statutory language in a manner that produces absurd or unreasonable results." Carson-Tahoe Hosp. v. Bldg. & Constr. Trades, 122 Nev. 218, 220, 128 P.3d 1065, 1067 (2006). "The meaning of a statute may be determined by referring to laws which are 'in pari materia.' 'Statutes may be said to be in pari materia when they

relate to the same person or things, to the same class of persons or things, or have the same purpose or object.'" State Farm Mut. v. Comm'r of Ins., 114 Nev. 535, 541, 958 P.2d 733, 737 (1998) (citation omitted) (quoting Goldstein v. State, 803 S.W.2d 777, 788 (Tex. App. 1991)).

The district court did not err in concluding that NRS 41A.097(4) requires Dr. Hald to have caused the birth defect for this statute to apply. However, this is not the Roses' claim. They allege that Dr. Hald failed to adequately diagnose and treat the birth defect. With no allegation that Dr. Hald caused the birth defect, the district court properly concluded that NRS 41A.097(4) does not apply to Justin's claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Saitta

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Patrick Flanagan, District Judge
David Wasick, Settlement Judge
Durney & Brennan/Reno
Lemons, Grundy & Eisenberg
Washoe District Court Clerk