

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYANNA EGAN BY AND THROUGH
HER GUARDIAN AD LITEM CAROL
EGAN,

Appellants,

vs.

JOSEPH A. ADASHEK, M.D.,
INDIVIDUALLY; BRIAN K. IRIYE,
M.D., INDIVIDUALLY; STEPHEN M.
WOLD, M.D., INDIVIDUALLY; LAS
VEGAS PERINATAL ASSOCIATES;
PEDIATRIX MEDICAL GROUP; MARK
KANETA, M.D., INDIVIDUALLY;
MARTHA KNUTSEN, M.D.,
INDIVIDUALLY; CONSOLACION
SISON-SWITALA, M.D.,
INDIVIDUALLY; AND BENJAMIN
HART, M.D., INDIVIDUALLY,
Respondents.

No. 66798

FILED

DEC 16 2015

TRACY K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Carol Egan, acting on behalf of her daughter, Bryanna, sued respondents for failing to properly monitor, diagnose, or treat Bryanna at the time of her birth, which allegedly caused Bryanna to sustain multiple injuries and disabilities. Upon respondents' motions, the district court ordered the case dismissed pursuant to NRCPC 12(b)(5).¹ As the parties are

¹The district court dismissed Egan's case on two grounds: that the statute of limitations had expired, and that the complaint failed to attach a medical expert affidavit as required by NRS 41A.071. These grounds

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familiar with the remaining facts, we do not delineate them here except insofar as necessary to our disposition.

The sole issue Egan raises on appeal is whether the district court erred in relying on NRS 41A.097 in concluding the suit was barred by the statute of limitations. Instead, Egan argues NRS 11.190 and NRS 11.250 apply to her suit. Specifically, as infancy is a disability under NRS 11.250 tolling the statute of limitations until the child reaches the age of 18, Egan argues the lawsuit was timely brought.² We disagree.

Generally a complaint will not be dismissed under NRCP 12(b)(5) unless it appears certain the plaintiff cannot prove any set of facts that would entitle her to relief. *Holcomb Cond. Homeowners' Assn., Inc. v. Stewart Venture, LLC*, 129 Nev. ___, ___, 300 P.3d 124, 128 (2013). But, the district court may dismiss a complaint pursuant to NRCP 12(b)(5) when the uncontroverted facts show the action is barred by the statute of limitations. *Id.* If the facts are uncontroverted, we review de novo the district court's application of the statute of limitations. *Id.*; see also *Sisseton-Wahpeton Sioux Tribe, of Lake Traverse Indian Reservation, N. Dakota & S. Dakota v. U.S.*, 895 F.2d 588, 591 (9th Cir. 1990) (the

...continued

were independent and alternative bases for dismissing all of Egan's claims. Egan does not address the court's conclusion regarding the medical expert affidavit, and admits she is not contesting that determination.

²Respondents assert this argument was not sufficiently preserved for appeal, as Egan failed to timely raise it to the district court. While we recognize this argument may have merit, it is unclear from the record whether the district court did at some point consider Egan's argument. Out of an abundance of caution, we therefore address it.

question of which statute of limitations applies is a question of law, reviewed de novo).

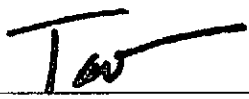
If two conflicting statutes apply to a situation, Nevada law is well-established that the specific statute will control over the general one. *See, e.g., State Dep't of Taxation v. Masco Builder Cabinet Group*, 129 Nev. ___, ___, 312 P.3d 475, 478 (2013); *Andersen Family Assocs. Ltd. v. Hugh Ricci, P.E.*, 124 Nev. 182, 187, 179 P.3d 1201, 1204 (2008); *In re Resort at Summerlin Litig.*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006). In interpreting statutes, we avoid interpretations that would render any language meaningless or superfluous. *Southern Nev. Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).

The present case is one for medical malpractice, arising from acts or omissions by respondent health care providers that allegedly caused Bryanna's injuries. Chapter 41A, which existed at the time of Bryanna's birth, specifically governs medical malpractice actions. Thus, under Nevada law, NRS 41A.097 controls, and the more general statute of limitation, does not apply. We further note application of NRS 11.190 and NRS 11.250 would here lead to the absurd result of rendering NRS 41A.097 meaningless, in clear conflict with Legislative intent. This is contrary to Nevada law, as our supreme court has already indicated that NRS 11.250 does not apply in place of NRS 41A.097 in medical malpractice cases. *See Monroe v. Columbia Sunrise Hosp. and Medical Ctr.*, 123 Nev. 96, 103, 158 P.3d 1008, 1012 (2007) (holding that in cases of brain injury in a minor, NRS 41A.097 applies and "infancy is not a disability that prevents running of the statute of limitations," referencing NRS 11.250).

The underlying facts are uncontested, and in applying NRS 41A.097 to those facts it is readily apparent the statute of limitations expired before Egan filed suit in 2013. The grounds for the present lawsuit were known as early as 1999, when Bryanna was born, and certainly no later than 2004 when Dr. Hanusek reviewed Bryanna's medical records and advised Egan on a possible lawsuit. Thus, under either the 2- or 4-year statute of limitations, or the tolled statute of limitations set forth in NRS 41A.097(4), the time to file suit expired sometime between 2001 and 2009—well before 2013. In short, under no set of facts can Egan show that she filed the present suit before the applicable statute of limitations expired, as a matter of law the suit is barred, and the district court was required to dismiss the action.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³Respondent doctors Iriye and Wold additionally argue sanctions are merited pursuant to NRCP 11(b) and NRAP 38. We conclude sanctions may be warranted in this instance, however, we decline to do so in light of this Court's affirmance.

cc: Hon. Valerie Adair, District Judge
Stephen E. Haberfeld, Settlement Judge
Ralph A. Schwartz, P.C.
Alverson Taylor Mortensen & Sanders
Mandelbaum, Ellerton & Associates
John H. Cotton & Associates, Ltd.
Eighth District Court Clerk