

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MITCHELL DAVID STIPP, AN  
INDIVIDUAL; AND AMY STIPP, AN  
INDIVIDUAL,  
Appellants,  
vs.  
DR. JULIE F. BEASLEY, AN  
INDIVIDUAL; JULIE F. BEASLEY,  
PH.D., INC., A NEVADA  
CORPORATION,  
Respondents.

No. 69815

**FILED**

APR 28 2017

ELIZABETH A. BROWN  
CLERK OF DISTRICT COURT  
BY *Amorica*  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

Mitchell and Amy Stipp appeal from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellants Mitchell and Amy Stipp sued Dr. Julie Beasley, her corporation (collectively "Dr. Beasley"), and other defendants on various claims. As pertinent to this appeal, the Stipps generally alleged Dr. Beasley wrongfully pressured them into hiring her team to provide therapy for their son, and that Dr. Beasley and her team members breached the contract by failing to provide the promised services. The district court dismissed the claims against Dr. Beasley because the Stipps did not attach a supporting medical expert affidavit pursuant to NRS 41A.071.<sup>1</sup>

On appeal, the Stipps argue they were not required to attach a medical expert affidavit to their complaint to advance their claims against Dr. Beasley. We agree.

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

We review de novo issues of statutory interpretation and the decision to dismiss a complaint under NRCP 12(b)(5). *Egan v. Chambers*, 129 Nev. 239, 242, 299 P.3d 364, 366 (2013); *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). NRS Chapter 41A was amended in June 2015, but those amendments apply only to claims accruing “on or after the effective date.” S.B. 292, 78th Leg. § 11. (Nev. 2015). Generally, an action will accrue when the wrong occurs and the party sustains an injury. *Siragusa v. Brown*, 114 Nev. 1384, 1392, 971 P.2d 801, 806 (1998). The Stipps filed their complaint in July 2015, and the parties do not dispute that the Stipps’ causes of action accrued before Chapter 41A was amended.

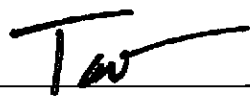
NRS 41A.071, as it existed before June 2015, required plaintiffs to attach a medical expert affidavit to complaints for “medical malpractice or dental malpractice.” NRS 41A.071 (2002). The Nevada Supreme Court in *Egan* noted that “medical malpractice” was then “defined as pertaining to physicians, hospitals, and hospital employees.” 129 Nev. at 242, 299 P.3d at 367. A “physician” was defined as a “person licensed under NRS Chapters 630 or 633.” *Id.* In *Egan*, because the defendant doctor (a podiatrist) was not licensed pursuant to NRS Chapters 630 or 633, the affidavit requirement did not apply. *Id.* at 242-43, 299 P.3d at 367.

Here, similarly, NRS 41A.071 does not apply because Dr. Beasley is not a physician licensed by Chapters 630 or 633. Rather, Dr. Beasley is a psychologist; psychologists are governed by Chapter 641. Although we recognize the amendments to NRS Chapter 41A indicate the Legislature now intends the affidavit requirement to apply to more healthcare professionals than those licensed under Chapters 630 or 633, it is clear that NRS 41A.071 as it existed at the time the Stipps’ causes of

action accrued does not require the Stipps to attach a medical expert affidavit to their complaint.<sup>2</sup> See *Egan*, 129 Nev. at 242-43, 299 P.3d at 367 (limiting the affidavit requirement to medical malpractice claims against healthcare providers licensed by NRS Chapters 630 or 633); see also *Zhang v. Barnes*, Docket No. 67219 (Order Affirming in Part, Reversing in Part, and Remanding, September 12, 2016) (“NRS 41A.071 . . . only applied to an action for medical malpractice or dental malpractice, not professional negligence, prior to 2015”) (internal quotations omitted).<sup>3</sup> Accordingly, we

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

  
Silver, C.J.

  
Tao, J.

  
Gibbons, J.

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<sup>2</sup>Because the district court also denied the Stipps’ motion to amend on the mistaken belief that the affidavit requirement would apply to the amended complaint, we likewise conclude the district court abused its discretion by denying leave to amend. See NRCP 15(a) (leave to amend should be “freely given when justice so requires”).

<sup>3</sup>We decline to address Dr. Beasley’s argument regarding NRS 41A.097 because it was raised for the first time on appeal. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”).

cc: Hon. Valerie Adair, District Judge  
Ara H. Shirinian, Settlement Judge  
Mitchell D. Stipp  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk