IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL ESCALANTE,
Appellant,
vs.
NEVADA DEPARTMENT OF PRISONS; JAMES D. POTTER, M.D.; AND ESTATE OF NICHOLAS M. KUDELKO, M.D.,
Respondents.

No. 36500

ORDER OF AFFIRMANCE

This is an appeal of a district court order granting summary judgment in favor of respondents.

Appellant first contends that it was error for the district court to have considered respondent's motion for summary judgment because the motion had been previously considered and rejected by another district court judge. In support of this contention, appellant cites District Court Rule 19, which provides that once a motion is denied, the same motion may not be made without written consent of the judge who originally considered the motion. The purpose of this rule is to prevent "judge shopping."[1] We have previously held that "[t]he animus of the rule is not offended" when the case is transferred as a result of a "fortuitous event" outside the control of either party.[2]

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[1]Moore v. City of Las Vegas, 92 Nev. 402, 404, 551 P.2d 244, 246 (1976) (addressing former Rule 27, which is now Rule 19).

[2]Id. at 405, 551 P.2d at 246.

Here, the decision to transfer the case was made by the court clerk, for purposes of caseload equalization. This decision was not within the control of either party. We thus conclude that although summary judgment had been previously denied, the then-presiding judge acted within his discretion when he entertained the motion for summary judgment.

Appellant next contends that the district court erred in granting summary judgment on the basis that the statute of limitations on his medical malpractice claim had expired. We disagree.

Appellant's physical injury occurred on or about October 28, 1993. Appellant continuously complained of an injury to his left knee. In July, 1994, appellant wrote a letter to the Governor of the State of Nevada complaining that he had ligament damage that was not being treated. On August 11, 1994, appellant filed a federal complaint alleging that his civil rights were violated by, among other things, the prison's failure to treat the injury to his left knee. Appellant specifically alleged that the denial of treatment and failure to diagnose his injury resulted in permanent damage to his left knee. On October 7, 1996, appellant filed a complaint with the medical screening panel. He filed the present negligence/medical malpractice complaint in district court on November 3, 1997.

It is undisputed that the applicable statute of limitation is found in NRS 41A.097(1), which states that:

> [e]xcept as otherwise provided in subsection 2, 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, for:
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> . . . .

> (c) Injury to . . . a person from error or omission in practice by the provider of health care.

The statute of limitations begins to run when a party "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."[3] Here, appellant's malpractice action was premised on the physician's alleged failure to adequately or promptly treat his injury. The record is clear that appellant was aware of this omission as early as August, 1994. We conclude that the district court properly held that the statute of limitations had expired before appellant filed his complaint with the medical screening panel.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Allan R. Earl, District Judge
Potter Law Offices
Attorney General/Carson City
Attorney General/Las Vegas
Clark County Clerk

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[3]Massey v. Litton, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983).

[4]We therefore need not address the issue of whether appellant's filing of the complaint with the screening panel tolled the statute of limitations.