IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS C. YEE, M.D.,
Appellant,
vs.
SUNRISE HOSPITAL, A NEVADA CORPORATION D/B/A SUNRISE HOSPITAL AND MEDICAL CENTER; COLUMBIA/HCA HEALTHCARE CORPORATION, A DELAWARE CORPORATION,
Respondents.

No. 37018

FILED

MAY 11 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a motion for attorney fees and costs brought by respondents Sunrise Hospital and its parent company, Columbia/HCA Healthcare Corporation (Sunrise Hospital). In the early morning hours of August 26, 1996, Dr. Thomas C. Yee, M.D., a Sunrise Hospital staff member since approximately 1993, was administering anesthesia to his scheduled patient in Sunrise Hospital's labor and delivery unit. Sunrise staff summoned Dr. Yee and informed him of a life-threatening emergency, requiring the immediate skills of an anesthesiologist. After first checking on his patient and leaving his pager number with the attending nurse, Dr. Yee went to attend the emergency patient. Dr. Yee stabilized the emergency patient's blood pressure and administered general anesthesia to prepare the patient for surgery. During the operation and while the emergency patient was still under general anesthesia, a labor and delivery nurse contacted Dr. Yee about another emergency patient who needed immediate assistance.

After ensuring the first emergency patient's condition was stable, Dr. Yee went to the labor and delivery unit to assist the second emergency patient. Dr. Yee found that the second emergency patient was

not attended by an obstetrician and was in severe pain, that her baby was in fetal distress and that the patient would require an emergency cesarean section. Dr. Yee administered an epidural analgesic and returned to the first emergency patient in the operating room. The first emergency patient's surgery was successfully completed. Dr. Yee then took the second emergency patient, who had completed delivery, to another room to be monitored. Then, Dr. Yee returned to his very first patient, who was still comfortable and stable. He remained with her awaiting delivery until approximately 6:30 a.m., when another anesthesiologist relieved him. Sunrise Hospital summarily suspended Dr. Yee from its medical staff for leaving the first emergency patient under general anesthesia unattended.

After a hearing before the hospital's fair hearing committee, the committee recommended that Sunrise Hospital's Medical Executive Committee uphold Dr. Yee's suspension. The Medical Executive Committee accepted this recommendation, and Dr. Yee's staff privileges were suspended indefinitely.

On November 20, 1996, Dr. Yee filed an amended verified complaint against Sunrise Hospital and its parent corporation, Colombia/HCA Health Care Corporation.[1] He set forth six claims for relief: (1) negligence, (2) negligent/intentional interference with prospective economic advantage, (3) civil enforcement of 42 U.S.C. § 1395dd(d)(2) (1994), (4) declaratory relief, (5) breach of the covenant of good faith and fair dealing, and (6) civil conspiracy. Dr. Yee alleged that Sunrise Hospital, to save costs, chose not to provide sufficient

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[1]On September 25, 1996, before the hospital held the fair hearing, Dr. Yee filed a verified complaint against Sunrise Hospital and its parent corporation.

anesthesiologists. Instead, the hospital's policy required nurses to look to operating rooms or to the labor and delivery unit for anesthesiologists to provide critical emergency services. Dr. Yee alleged that this policy jeopardized patients requiring emergency care, in violation of the hospital's duty to such patients, and that it forced physicians to compromise their ethical duties by having to choose between remaining with a stable anesthetized patient, as required by the hospital, or letting an emergency patient possibly die. Dr. Yee further alleged that, due to the hospital's policies and bylaws and its failure to adequately staff anesthesiologists or to have an on-call schedule for anesthesiologists, Dr. Yee was compelled to make an ethically and medically proper triage decision. Despite the apparent propriety of Dr. Yee's decision, the hospital summarily suspended his staff privileges, thereby damaging his reputation and income-generating potential.

On June 13, 1997, Sunrise Hospital moved to dismiss the amended complaint. On July 31, 1997, the district court granted in part Sunrise Hospital's motion to dismiss regarding Dr. Yee's claims for negligence, civil enforcement of 42 U.S.C. § 1395dd(d)(2) (1994), declaratory relief and civil conspiracy. Subsequently, Sunrise Hospital answered the amended complaint and then moved for summary judgment on Dr. Yee's two remaining claims. The district court denied the motion.

On August 10, 2000, Dr. Yee moved to voluntarily dismiss his remaining claims under NRCP 41(a)(2).[2] Sunrise Hospital responded by asking the district court to grant its renewed motion for summary

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[2]NRCP 41(a)(2) provides, in relevant part, that "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper."

judgment instead. On September 14, 2000, the district court granted the motion for summary judgment as to Dr. Yee's two remaining claims.

Sunrise Hospital then moved for attorney fees and costs under NRS 18.010[3] on the ground that Dr. Yee brought his claims without reasonable grounds. On November 1, 2000, after a hearing, the district court awarded Sunrise Hospital $231,396.25 in attorney fees and $17,889.04 in costs, plus interest. Dr. Yee now appeals the district court's decision to award costs and attorney fees.[4] The amount of the attorney fees and costs is not at issue.

NRS 18.010(2)(b) allows the district court to award attorney fees to a prevailing party "when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." We will not reverse the district court's award of attorney fees absent an abuse of discretion.[5]

The basis for the district court's order awarding attorney fees was that Dr. Yee's claims were groundless. The frivolousness of a claim is determined at the time the claim is initiated, and "'the fact that it later

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[3]NRS 18.010 only provides for the recovery of attorney fees, not costs. However, the district court was required to award costs to the prevailing party under NRS 18.020(3).

[4]On November 9, 2000, Dr. Yee filed his notice of appeal regarding the order awarding attorney fees and costs. On December 1, 2000, Dr. Yee filed an amended notice of appeal as to all appealable orders. On July 29, 2002, this court granted Sunrise Hospital's motion to dismiss the appeal in part and limited this appeal to the order granting attorney fees and costs. Yee v. Sunrise Hospital, Docket No. 37018 (Order Granting Motion and Dismissing Appeal in Part, July 29, 2002).

[5]Miller v. Jones, 114 Nev. 1291, 1300, 970 P.2d 571, 577 (1998).

becomes frivolous will not support an award of fees.'"[6] A claim is groundless if there is no credible evidence at trial to support it.[7] Even if an action has not proceeded to trial and judgment, the district court may award attorney fees to the prevailing party under NRS 18.010.[8]

Dr. Yee argues that his claims were not groundless because the district court denied Sunrise Hospital's motion for summary judgment on two of his six claims and because he could establish a prima facie case for those two remaining claims. Dr. Yee contends that, because case law in effect at the time technically barred the district court from reviewing the fair hearing committee's revocation of his privileges,[9] he had to be creative to surmount that technical bar. He contends that, since the case law was subsequently overruled and this court implicitly recognized that the prior case law was unreasonable,[10] his creativity should not be punished by an award of attorney fees to the hospital.

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[6]State of Florida, Dep't of Health and Rehabilitative Servs. v. Thompson, 552 So. 2d 318, 319 (Fla. Dist. Ct. App. 1989), quoted in Barozzi v. Benna, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996).

[7]Semenza v. Caughlin Crafted Homes, 111 Nev. 1089, 1095, 901 P.2d 684, 688 (1995).

[8]Id. at 1096, 901 P.2d at 688.

[9]Lakeside Community Hosp. v. Levenson, 101 Nev. 777, 778, 710 P.2d 727, 728 (1985) (holding that "the district court had no jurisdiction to review the decision of the hospital's board" regarding the denial of a physician's hospital privileges), overruled in part by Meyer v. Sunrise Hosp., 117 Nev. 313, 321 n.3, 22 P.3d 1142, 1148 n.3 (2001).

[10]Meyer, 117 Nev. at 321 n.3, 22 P.3d at 1148 n.3 (expressly overruling Lakeside Community Hosp. v. Levenson "[t]o the extent that Lakeside would bar this court's consideration of whether a hospital board acted unconstitutionally or beyond the conditional immunity of the HCQIA"); see also Clark v. Columbia/HCA Info. Servs., 117 Nev. 468, 475,

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The inquiry into whether a plaintiff has reasonable grounds for his claims differs from that undertaken on a summary judgment motion. In ruling on a summary judgment motion, the district court must make all reasonable inferences in favor of the nonmoving party in determining whether the movant is entitled to judgment as a matter of law.[11] In contrast, to determine whether attorney fees should be awarded under NRS 18.010(2)(b), the trial court must inquire into the actual circumstances of the case, "rather than a hypothetical set of facts favoring plaintiff's averments."[12]

Dr. Yee argues that, even though he was not required to establish a prima facie case of wrongful interference with prospective economic advantage, he in fact did so. Tortious interference with prospective economic advantage requires a showing of:

> (1) a prospective contractual relationship between the plaintiff and a third party; (2) knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by preventing the relationship; (4) the absence of privilege or

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25 P.3d 215, 220 (2001) ("The language of Lakeside, which suggests an absolute prohibition of judicial review of hospital peer review decisions, is overly broad. Although courts may not have jurisdiction to review purely administrative decisions of private hospitals, the courts of this state do have jurisdiction to hear cases alleging torts, breach of contract, violation of hospital bylaws or other actions that contravene public policy.").

[11]Attorney General v. Board of Regents, 119 Nev. ___, ___, 67 P.3d 902, 905 (2003).

[12]Bergmann v. Boyce, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993) (concluding that "the fact that the . . . complaint survived a 12(b)(5) motion to dismiss was irrelevant to the trial court's inquiry as to whether the claims of the complaint were groundless").

> justification by the defendant; and (5) actual harm to the plaintiff as a result of the defendant's conduct.[13]

Dr. Yee's complaint and deposition testimony revealed that he had privileges at other hospitals, several of which were jeopardized by the revocation of his privileges at Sunrise Hospital. Dr. Yee also alleged that Sunrise Hospital knew that he enjoyed clinical privileges at other hospitals and that his suspension at Sunrise Hospital would adversely affect his other hospital privileges, thereby diminishing his income-generating potential. The deposition testimony of Dr. Jonathan Benumof, M.D., Dr. Yee's expert witness, that Sunrise Hospital wrongfully revoked Dr. Yee's privileges after putting him in a situation where he had to make triage decisions regarding emergency patients, was prima facie evidence that the hospital lacked justification or privilege for its conduct. Hence, it appears that Dr. Yee was able to establish a prima facie case regarding all of the elements except for the intent element.

The intent element requires that "the defendant be substantially certain that interference with a commercial relationship will occur."[14] It could be reasonably inferred, as Dr. Yee asserts, that Sunrise Hospital was substantially certain that Dr. Yee's economic relationships with other area hospitals would be harmed.

However, Dr. Yee was not required to establish a prima facie case in order for the district court to determine that this cause of action rested on reasonable grounds. Often, a party must plead several causes of

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[13]Wichinsky v. Mosa, 109 Nev. 84, 88, 847 P.2d 727, 729-30 (1993).

[14]LTR Stage Lines v. Gray Line Tours, 106 Nev. 283, 287, 792 P.2d 386, 388 (1990).

action that will be whittled away as the case is refined through discovery. As eloquently stated by the Supreme Court of Kansas:

> "It is an elementary principle of law that the purpose of discovery rules is to provide an effective means of detecting and exposing false, fraudulent and sham claims and defenses; to make available, in a simple, convenient, and inexpensive way, facts which otherwise could not be proved except with great difficulty; to educate the parties in advance of trial as to the real value of their claims and defenses; to expedite litigation; to safeguard against surprise; to prevent delay; to simplify and narrow the issues[;] and to expedite and facilitate both preparation and trial."[15]

Given that the purpose of discovery is to find and obtain evidence that will help one party prove its case, or the other party to disprove it, the non-prevailing party need not prove a prima facie case in order to escape the imposition of attorney fees, so long as there is some evidence that the suit was based on reasonable grounds. The fact that Dr. Yee had at least some evidence in the form of his deposition, and later, in the form of his expert's opinion, is enough to show that Dr. Yee's cause of action was not groundless. Moreover, no evidence in the record indicates that Dr. Yee intentionally made false allegations or disregarded the truth, which are also factors to be considered in determining whether the claim was frivolous when brought.[16]

Dr. Yee also asserts that he had sufficient evidence to establish a prima facie case for breach of the implied covenant of good faith and fair dealing. "An implied covenant of good faith and fair dealing

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[15]Burkhart v. Philsco Products Co., Inc., 738 P.2d 433, 444 (Kan. 1987) (quoting Vickers v. Kansas City, 531 P.2d 113, 118 (Kan. 1975)).

[16]Semenza, 111 Nev. at 1096, 901 P.2d at 688.

exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that disadvantage the other."[17] At his deposition, Dr. Yee asserted that he reasonably believed no other anesthesiologists were available because the labor and delivery nurses told him that their attempts to contact another anesthesiologist had failed. Dr. Yee asserted that the hospital had breached the implied covenant by failing to have an anesthesiologist on call and by relying on anesthesiologists who happened to be at the hospital to respond to emergencies. The hospital thereby put Dr. Yee in the situation where he had to choose between his moral and ethical obligations to treat both emergency patients, even if it meant leaving one unattended for a few minutes in violation of the hospital's bylaws, or remaining with the first emergency patient and ignoring the second emergency patient and acting in accordance with the bylaws.

Dr. Yee had at least some credible evidence regarding whether the bylaws created a contractual relationship and whether the hospital breached the implied covenant of good faith and fair dealing by requiring anesthesiologists to remain with a patient under general anesthesia at all times while not providing an on-call schedule. Dr. Yee was aware that, while most of the area hospitals had the same practice as Sunrise Hospital of relying on surgeons to provide their own anesthesiologists, two of the other hospitals had an on-call schedule for anesthesiologists in case of emergencies.

Dr. Yee's cause of action was not groundless because he could have reasonably believed that the bylaws formed a contractual relationship between the parties and that Sunrise Hospital's failure to

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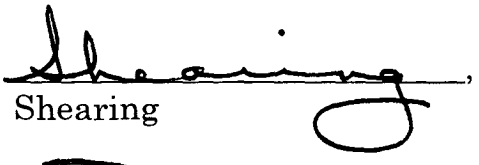
[17]Frantz v. Johnson, 116 Nev. 455, 465 n.4, 999 P.2d 351, 358 n.4 (2000).

have anesthesiologists on call compromised his ability to abide by the bylaws. Furthermore, Dr. Yee's amended complaint survived a motion for summary judgment. Although survival of a motion for summary judgment is not dispositive of whether Dr. Yee asserted frivolous claims,[18] denial under NRCP 56(f) for further discovery suggests that Dr. Yee had reasonable grounds for his claims because there was some material fact in dispute. Therefore, Dr. Yee's claim for breach of the implied covenant of good faith and fair dealing was not groundless when he initiated the complaint.

Because two of Dr. Yee's six claims were not groundless at the time the claims were initiated, we conclude that the district court abused its discretion by awarding attorney fees to Sunrise Hospital under NRS 18.010(2)(b). Accordingly, we

ORDER the judgment of the district court REVERSED.



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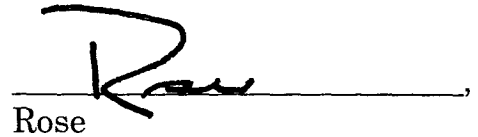
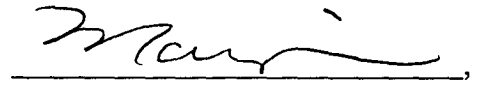


_____, J.
Rose



_____, J.
Maupin

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[18]The standard for a motion for summary judgment differs from the standard governing the district court's determination of whether the complaint was frivolous when brought. See Bergmann, 109 Nev. at 675, 856 P.2d at 563.

cc: Hon. Kathy A. Hardcastle, Chief District Judge
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