IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTY M. BETTS, IN HER CAPACITY AS SPECIAL ADMINISTRATOR OF THE ESTATE OF STANLEY GORDON BETTS; AND CHRISTY M. BETTS, IN HER INDIVIDUAL CAPACITY,
Appellants,
vs.
ROYAL SPRINGS HEALTHCARE AND REHAB., INC., A NEVADA CORPORATION,
Respondent.

No. 77323-COA

ORDER OF REVERSAL AND REMAND

Christy Betts appeals from a district court order granting Royal Springs' motion to dismiss for failing to attach a medical expert affidavit under NRS 41A.071. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

This appeal stems from the death of Stanley Betts that occurred while he was a resident at Royal Springs Healthcare and Rehab (Royal Springs).[1] In March 2016, Stanley Betts suffered severe injuries after a head-on collision with another car, resulting in Stanley undergoing a cervical fusion procedure. On June 14, 2016, Stanley was transferred to Royal Springs Healthcare and Rehab, Inc. (Royal Springs), a facility for skilled nursing. During his residency at Royal Springs, Stanley depended on therapeutic lines and a tracheostomy ventilation (trach) for survival.

[1]We do not recount the facts except as necessary to our disposition. The facts stated herein are based on the facts alleged in C. Betts' complaint and are not considered conclusive evidence.

Starting the day after he arrived at Royal Springs, Stanley made numerous attempts to remove his therapeutic lines and trach, some of which were successful. This pattern of behavior resulted in Royal Springs, with C. Betts' consent, placing hand mitten restraints on Stanley. But, even after the hand mittens were placed, Stanley continued to attempt to remove his therapeutic lines and trach up until his death on August 12, 2016. On that night, a medical professional allegedly placed hand mittens on Stanley after he successfully removed his trach. He was left unattended for a period of time before another medical professional checked on him, only to discover Stanley pale with the hand mittens and trach on the floor. Stanley was declared deceased shortly thereafter.

Christy Betts (C. Betts), in both her individual capacity and as special administrator of Stanley Betts' estate, sued Royal Springs for negligence and wrongful death. Royal Springs filed a motion to dismiss, arguing that C. Betts' complaint must be dismissed under NRS 41A.071 because it was not filed with a medical expert affidavit. In response, C. Betts countered that NRS 41A.071 did not apply to her complaint because the complaint alleged negligence and wrongful death, not professional negligence. Additionally, C. Betts argued that because Royal Springs, as a facility for skilled nursing, was not a "provider of health care" under NRS 41A.017, her complaint was not subject to NRS 41A.071 because she could not bring a "professional negligence" suit against a facility not included in the definition of "provider of health care." The district court dismissed the complaint with prejudice, finding that the essence of the claims was based on professional negligence and Royal Springs was a "provider of health care" because it employs nurses who were likely vicariously liable for Stanley Betts' death.

On appeal, C. Betts argues that the district court erred by misinterpreting the definition of "provider of health care" to include "facilities for skilled nursing." C. Betts further argues that the district court erred by not reviewing the complaint in light of NRCP 12 jurisprudence because the district court did not view the complaint in a light most favorable to C. Betts. Lastly, C. Betts contends that the district court erred, under both NRCP 15(a) and NRS 41A.071, in denying her request for leave to amend her complaint and dismissing her complaint with prejudice. This appeal turns on C. Betts's first argument, which requires us to determine the applicability of NRS 41A.071 to suits brought against "facilities for skilled nursing."

We review a district court's statutory construction determinations de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 737, 334 P.3d 402, 405 (2014). We first look to the plain language of the statute to determine whether the statute is ambiguous before we proceed to look to other canons of interpretation. *See Szydel v. Markman*, 121 Nev. 453, 456-57, 117 P.3d 200, 202 (2005).

NRS 41A.071 provides that, "[i]f an action for *professional negligence* is filed in the district court, the district court shall dismiss the action, without prejudice, if the action is filed without a[ ] [medical expert] affidavit." NRS 41A.071 (emphasis added). "Professional negligence" is defined as "the failure of a *provider of health care*, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced *providers of health care*." NRS 41A.015 (emphasis added). Accordingly, when a complaint alleges "professional negligence" against a "provider of health care," the plaintiff must file a medical expert affidavit with the complaint to ensure the complaint does not raise frivolous claims. NRS 41A.071.

Turning to the definition of "provider of health care," we find that the definition unambiguously does not include a "facility for skilled nursing." A "provider of health care" includes:

> a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees.

NRS 41A.017. This definition provides an enumerated list detailing which specific professionals and medical facilities are included in the definition, listing 14 types of medical professionals and five types of medical facilities. NRS 41A.017. Given the extent of the enumerated list, we find that the plain language is supported by the canon *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of another"). *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

Moreover, "[w]e presume that the Legislature enact[s a new] statute with full knowledge of existing statutes relating to the same subject." *NAIW v. Nev. Self-Insurers Ass'n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (internal quotation marks and citation omitted). The Legislature presumably omitted facilities for skilled nursing from the "provider of health care" definition because it was aware that "facilities for skilled nursing" were referenced under NRS 449.0039(1) (the definition of "facility for skilled nursing") and NRS 449.0151(6) (the definition of "medical facility").

When a statute is unambiguous on its face, its legislative history is unimportant. But here, we note that the legislative history behind NRS 41A.017 further confirms this interpretation. Rather than expressly include

"facilities for skilled nursing in the enumerated list provided in the "provider of health care" definition, the Legislature knowingly opted not to include "facilities for skilled nursing" or "medical facility" in this definition despite both phrases being defined in other provisions. *See* Hearing on S.B. 292 Before the Assembly Comm. on Judiciary, 78th Leg. (Nev., March 26, 2015) (Robert Rourke, Esq. testified about the need to include all health care providers, including facilities for skilled nursing, by suggesting that the "easiest way to [accomplish this] is through enumerating the medical facilities' definition that we already have in our statutes.").

In sum, we find that the plain language of the "provider of health care" definition neither expressly includes "facilities for skilled nursing," nor does it state that a "facility for skilled nursing" is a "physicians' professional corporation or group practice" simply because it employs nurses. We cannot stretch the plain language of an unambiguous enumerated definition to include a facility that the Legislature did not include in the provision. Therefore, we conclude that the plain language of the definition of "provider of health care" unambiguously does not include a "facility for skilled nursing."

Here, C. Betts' complaint alleged negligence and wrongful death against Royal Springs, a facility for skilled nursing. Regardless of whether the complaint's "General Allegations" mentions any other individuals, the complaint is not subject to the medical expert affidavit requirement because the complaint solely names Royal Springs, a facility for skilled nursing, as the defendant. Additionally, the district court may not presume that the complaint raises a theory of vicarious liability against nurses who are not named defendants and who have yet to be implead, especially before discovery commences. *See Zohar v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d

402, 406 (2014) ("[W]e are hesitant to adopt such a strict interpretation of NRS 41A.071 . . . because at this preliminary point in the proceedings, the parties have conducted little to no formal discovery.").

Because a "provider of health care" does not include a "facility for skilled nursing," a suit brought against a facility for skilled nursing cannot allege "professional negligence." As such, C. Betts' complaint is not subject to NRS 41A.071's medical expert affidavit requirement because the complaint alleges negligence against Royal Springs, a facility for skilled nursing.[2] Thus, the district court erred in finding that the essence of the complaint stemmed from professional negligence because a professional negligence suit cannot be brought against a facility for skilled nursing.

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

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Rob Bare, District Judge
Clear Counsel Law Group
Tyson & Mendes LLP
Eighth District Court Clerk

[2]In light of our disposition, we need not reach the other issues raised by C. Betts on appeal.