

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH M. CARPINO,  
Appellant,

vs.

NOVA CARE PROSTHETICS, INC.;  
MIKE STRAUGHAN, C.P.O.; FORREST  
SEXTON, C.P.O.; AND DAVID KING,  
C.P.O.,  
Respondents.

No. 38025

FILED

APR 08 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order granting respondents' motion for summary judgment.<sup>1</sup>

Summary judgment is proper when no issue of material fact exists and the moving party is entitled to judgment as a matter of law.<sup>2</sup> "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party."<sup>3</sup> "[I]n deciding whether summary judgment is appropriate, the evidence must be viewed in the light most favorable to the party against whom summary judgment is sought, and the factual allegations of that party must be

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<sup>1</sup>Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.

<sup>2</sup>Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441 (1993).

<sup>3</sup>Id. at 452, 851 P.2d at 441-42 (citing Valley Bank v. Marble, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989)).

presumed correct.”<sup>4</sup> To avoid summary judgment, the non-moving party must set forth specific facts demonstrating the existence of a genuine issue of material fact, either by affidavit or otherwise.<sup>5</sup> This court reviews a district court’s grant of summary judgment de novo.<sup>6</sup>

Under NRS 11.190, actions to recover damages for injuries to a person caused by the wrongful act or neglect of another are subject to a two-year statute of limitations period. “The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought.”<sup>7</sup> Under the “discovery rule” exception to this general rule, however, the limitations period is “tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action.”<sup>8</sup> The question of when a claimant discovered or should have discovered the facts giving rise to a cause of action is typically one of fact.<sup>9</sup> Where uncontroverted evidence shows that the plaintiff discovered or should have discovered the

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<sup>4</sup>Ferreira v. P.C.H. Inc., 105 Nev. 305, 306, 774 P.2d 1041, 1042 (1989).

<sup>5</sup>Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

<sup>6</sup>Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002), cert. denied, 124 S. Ct. 82 (2003).

<sup>7</sup>Siragusa v. Brown, 114 Nev. 1384, 1392, 971 P.2d 801, 806 (1998) (quoting Petersen v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990)).

<sup>8</sup>Id.

<sup>9</sup>Id. at 1400, 971 P.2d at 812.

facts giving rise to the claim, however, it is appropriate for this determination to be made as a matter of law.<sup>10</sup>

Here, appellant filed a lawsuit in federal court alleging violations of the Fifth, Eighth, and Fourteenth Amendments, along with violations of the Americans with Disabilities Act, on August 27, 1996. Appellant's federal lawsuit was based on the same alleged injuries that gave rise to the underlying negligence lawsuit, which means that he must have discovered these injuries no later than August 27, 1996. Appellant, however, did not file his complaint in the underlying negligence case until July 20, 2000, almost four years after appellant's federal lawsuit was filed. Appellant must have known of the alleged injuries at the time his federal lawsuit was filed, yet he waited almost four years to file his negligence lawsuit.

Appellant argues that, in addition to his federal claims, he requested that the federal court exercise supplemental jurisdiction over his state law negligence claims. He maintains that under 28 U.S.C. § 1367(d), which tolls the state statute of limitations while state law claims asserted under supplemental jurisdiction are pending in federal court, and for 30 days after such claims are dismissed by the federal court, the statute of limitations on his negligence claim was tolled. Appellant, however, did not actually assert any negligence claims in his federal complaint. Moreover, appellant admits that he did not even think of asserting a negligence claim until December of 1998. Therefore, he could not have raised any such claims in his federal complaint, which was filed

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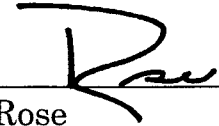
<sup>10</sup>Id. at 1401, 971 P.2d at 812.

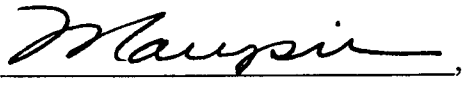
on August 27, 1996. Therefore, the tolling provision of § 1367(d) does not apply.

This court has rejected the idea that the mere pendency of proceedings in other courts tolls the statute of limitations in Nevada.<sup>11</sup> Therefore, the statute of limitations was not tolled while appellant's federal lawsuit was pending. When appellant finally filed his negligence lawsuit in the Nevada district court, almost four years after he discovered the alleged injuries, the two-year statute of limitations period had expired. The district court thus did not err in granting respondents' motion for summary judgment. Accordingly, we affirm the district court's order.

It is so ORDERED.<sup>12</sup>

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

cc: Hon. William A. Maddox, District Judge  
Joseph M. Carpino  
Alverson Taylor Mortensen Nelson & Sanders  
Carson City Clerk

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<sup>11</sup>Id. at 1394 n.7, 971 P.2d at 808 n.7.

<sup>12</sup>We deny as moot respondents' motion for a stay of this proceeding.