IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN DAMONTE, JR.; DARLENE DAMONTE VOPAT; BENJAMIN DAMONTE, III; NICHOLAS DAMONTE; MICHAEL DAMONTE; RICHARD BULLARD, JR.; RODNEY BULLARD; AND EVETTE BULLARD WARD,
Appellants,
vs.
MCDONALD CARANO WILSON LLP, A NEVADA LIMITED LIABILITY PARTNERSHIP; AND LEO PARNELL BERGIN, III,
Respondents.

No. 85241

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion for reconsideration and dismissing a legal malpractice action. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

This legal malpractice case arose after two siblings, Benjamin Damonte Jr., and Darlene Damonte Vopat, learned that their now-deceased brother, Louis Damonte, held a larger ownership interest in family-owned business entities than they did. These two siblings and their children (hereinafter the Damontes) alleged that the attorney with whom their family had a longstanding attorney-client and personal relationship created these entities without disclosing their brother's resultant unequal interest. Asserting nine theories of liability, they sued this attorney, respondent Leo

Bergin III, and his law firm, respondent McDonald Carano Wilson, LLP, in 2021.

Bergin and the firm moved to dismiss, arguing in part that the statute of limitations had run on the Damontes' claims. They pointed to, among others, allegations in the Damontes' own complaint concerning Benjamin Jr.'s and Darlene's possession of Schedule K-1 tax forms that the "Damonte Family Limited Partnership" would file annually, which evidenced the disparate ownership interest. They also stressed allegations detailing that Bergin told Darlene and Benjamin Jr. that Louis held a "greater interest" in 2018, when the siblings were discussing how the management structure would unfold upon Louis' passing. Both sets of allegations, they argued, proved that the Damontes learned of any malpractice claim outside of the statute-of-limitations window.

Yet, other allegations in the complaint leaned the other way. For example, the Damontes alleged they never actually saw the K-1 forms "showing all interest in the entities" until 2021. And, though Bergin allegedly told Darlene and Benjamin Jr. that Louis held a "greater interest" two times, the siblings also allegedly asked Louis about this shortly after Bergin first mentioned it and Louis maintained each sibling received one-third "and he took no more ever than an equal share." The Damontes further alleged that Bergin's assistant sent Benjamin Jr. a copy of a "Damonte LLC" operating agreement "related to his question . . . concerning continued management" that neither contained "any exhibits, nor did it provide any documents showing membership" that would have flagged the disparate interest.

After initially denying the motion, the district court granted the motion to dismiss upon reconsideration. Its final order granting

reconsideration and dismissal pointed to the "greater interest" statement by Bergin and the K-1s as having put the Damontes on notice of their potential claims. The Damontes appeal the grant of reconsideration and resulting dismissal.

Standard of review

While we review orders granting reconsideration for an abuse of discretion, we review underlying orders granting motions to dismiss for failure to state a claim de novo. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010); *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011). Such dismissal is proper "only if it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief." *Guzman v. Johnson*, 137 Nev. 126, 130, 483 P.3d 531, 536 (2021) (internal alterations omitted) (quoting *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)). This is a "rigorous[ ]" review, where we assume all alleged facts are true and draw all inferences in favor of the complainant. *Id.* Even so, a plaintiff may fail to state a claim where the uncontroverted facts indicate that the statute of limitations has run on the action. *Holcomb Condo. Homeowners' Ass'n, v. Stewart Venture, LLC*, 129 Nev. 181, 186, 300 P.3d 124, 128 (2013).

The district court erred in granting the motion for reconsideration and dismissal as a result

NRS 11.207(1) establishes the statute of limitations for legal malpractice claims. It delineates two potential trigger dates: (1) "the date the client discovers or should have discovered the claim (two years) or" (2) "the date the client suffered damage (four years)." *See Branch Banking & Tr. Co. v. Gerrard*, 134 Nev. 871, 872, 432 P.3d 736, 738 (2018). The two-year "discovery rule" sets a date based on actual, inquiry, or constructive

notice, such that the statute of limitations runs if "uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered the facts giving rise to the cause of action." *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998) (internal quotation marks omitted); *Massey v. Litton*, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983); *see also Brady, Vorwerck, Ryder & Caspino v. New Albertson's*, 130 Nev. 632, 640, 333 P.3d 229, 234 (2014) (recognizing that NRS 11.207 codified the discovery rule). Notwithstanding the discovery rule's attendant requirement that clients exercise "reasonable diligence in discovering their causes of action," *Bemis*, 114 Nev. at 1025, 967 P.2d at 440, a discovery-date will toll if "the attorney . . . conceals any act, error or omission upon which the action is founded and which is known or through the use of reasonable diligence should have been known to the attorney," NRS 11.207(2).

Applying NRS 11.207 to the record here, we cannot say "beyond a doubt" that the allegations reveal "no set of facts" that would entitle the Damontes to relief when we take the allegations as true and draw all inferences in the Damontes' favor. *Guzman*, 137 Nev. at 130, 483 P.3d at 536 (quoting *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672). There are allegations about how the disparate ownership was borne out of various, intertwined family entities, and it is not obvious which entity was being addressed by Bergin's alleged statements. There are allegations that McDonald Carano disclosed one such entity's operating agreement without the exhibits that might have flagged the siblings' disparate interest in 2018. And there is a plausible inference—one we must draw in the Damontes' favor at this juncture—that "greater interest" could refer to an emotional interest when the siblings were discussing management issues. Alongside our duty to take these combined allegations as true under a liberal notice-

pleading standard, the Damontes allege enough facts to dispute whether they were on or should have been on any type of notice of the claim outside the statute of limitations window or whether the statute of limitations should be tolled.[1] *See W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992) (explaining that Nevada's notice-pleading standard requires courts to "liberally construe pleadings"); *see also Bemis*, 114 Nev. at 1024-25, 967 P.2d at 440.

True, Bergin's "greater interest" comment and the receipt of the K-1 forms might "irrefutably" demarcate an earlier discovery-date if these factual allegations stood alone. *Bemis*, 114 Nev. at 1025, 967 P.2d at 440. But the complaint also contains other allegations that cut against the existence of the requisite notice to trigger the statute of limitations: (1) Louis continued to maintain that the siblings were treated equally; (2) Benjamin Jr. and Darlene did not know they had the K-1s—an informational return that the partnership files—in their possession; and (3) Benjamin Jr. and Darlene did not knowingly receive evidence of their disparate interest in the business entities until 2019. Combined with the potential to interpret "greater interest" as meaning an emotional interest and the existence of different entities contributing to the disparate ownership interests, the Damontes' allegations are not indicative of the "uncontroverted evidence" necessary to dismiss at this stage based on the statute of limitations. *Id.* (internal quotation marks omitted). We conclude that it instead reveals some "set of facts, which, if true, would entitle the plaintiff[s] to relief," i.e., a complaint that is not time-barred. *Guzman*, 137

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[1]We note that Bergin and McDonald Carano are not challenging the district court's finding that NRS 11.207's two-year timeline, as opposed to the four-year timeline, applies to these facts.

Nev. at 130, 483 P.3d at 536 (internal alteration omitted) (quoting *Buzz Stew*, 124 Nev. 228, 181 P.3d at 672). Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

_____, J.
Cadish

_____, J.
Pickering

_____, J.
Bell

cc: Hon. Lynne K. Jones, Chief Judge
Margaret M. Crowley, Settlement Judge
Leverty & Associates Law, Chtd.
Laxalt Law Group, Ltd./Reno
Washoe District Court Clerk

[2]To the extent the parties raise other arguments, we need not address them given the disposition of this appeal.