

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ARTHUR LAGESON,
Appellant,
vs.
DR. NADER ELDRIS, M.D.,
Respondent.

No. 87862-COA

FILED
OCT 07 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Arthur Lageson appeals from a district court order dismissing his complaint in a civil action. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Lageson initiated a civil action against respondent Dr. Nader Eldris, M.D. on September 28, 2023. Lageson's complaint alleged that his mother, Esther Lageson, was admitted to Desert Springs Hospital on November 10, 2021, for acute encephalopathy caused by a urinary tract infection. She was subsequently diagnosed with pneumonia. Lageson alleged that Dr. Eldris failed to inform him and his mother that a previous doctor had initiated a do not resuscitate (DNR)/do not intubate (DNI) order. Lageson further claimed that the DNR/DNI order was initiated without his or his mother's consent. On November 24, Lageson's mother's condition worsened, and she ultimately passed away.

In his complaint, Lageson asserted claims for negligence, gross negligence, negligent infliction of emotional distress, and wrongful death. Specifically, Lageson asserted that Dr. Eldris "had a duty of care that was

breached by withdrawing treatment and abandoning his patient.” He alleged that Dr. Eldris failed to treat his mother for her illnesses. The complaint further stated that Dr. Eldris failed to inform him and his mother of the DNR/DNI order. Lageson also argued that Dr. Eldris’s actions constituted *res ipsa loquitur*. Attached to Lageson’s complaint were photos of his mother’s whiteboard from the Desert Springs Hospital room, hospital records, and an affidavit from Lageson’s wife attesting that her husband’s complaint was accurate.

In November 2023, Dr. Eldris filed a motion to dismiss Lageson’s complaint. Specifically, Dr. Eldris argued that each of Lageson’s claims were claims for professional negligence. Thus, the motion alleged that Lageson’s complaint was barred by the statute of limitations and that Lageson did not attach a medical affidavit in support of his professional negligence claims pursuant to NRS 41A.071. Lageson filed an opposition. Subsequently, the district court entered an order granting the motion to dismiss. The court found that Lageson’s allegations were claims for professional negligence, which required compliance with NRS 41A.071. Because Lageson failed to attach a medical affidavit in support of his complaint, the court dismissed his complaint. Lageson now appeals.

On appeal, Lageson argues that the district court erred in dismissing his complaint because he did not assert claims for professional negligence. Thus, he argues that he was not required to file an affidavit in support of his complaint. He further asserts that the district court was biased against him.

“We review a district court order granting a motion to dismiss de novo.” *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014). We “liberally construe pleadings” because “Nevada is a notice-pleading jurisdiction.” *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). In adjudicating a motion to dismiss, all factual allegations in the complaint are deemed as true and all inferences are drawn in the plaintiff’s favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227, 181 P.3d 670, 672 (2008). A “complaint should be dismissed only if it appears beyond a doubt that [the plaintiffs] could prove no set of facts, which, if true, would entitle [them] to relief.” *Id.* Under NRS 41A.071, a professional negligence action requires a supporting affidavit from a medical expert. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006). We also review a “district court’s decision to dismiss [a] complaint for failing to comply with NRS 41A.071 de novo.” *Yafchak v. S. Las Vegas Med. Invs., LLC*, 138 Nev., Adv. Op. 70, 519 P.3d 37, 40 (2022).

Professional negligence is “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. To determine how to characterize a claim, this court looks to the gravamen of each claim “rather than its form to see whether each individual claim is for medical negligence or ordinary negligence.” *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 643, 403 P.3d 1280, 1285 (2017). Consequently, “[a]llegations of [a] breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for [professional negligence].” *Id.* at 1284. In

addition, NRS 41A.100(1) sets forth five res ipsa loquitur exceptions to the medical affidavit requirement.

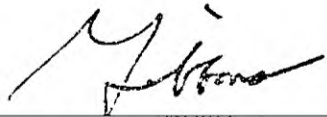
Here, Lageson's complaint alleged that Dr. Eldris failed to communicate with Lageson and his mother, failed to obtain Lageson's and his mother's consent for the DNR/DNI order, and failed to properly treat Lageson's mother. Thus, the gravamen of the allegations sounded in professional negligence. *Szymborski*, 133 Nev. at 643, 403 P.3d at 1285. Although Lageson argues that he did not need to attach a medical affidavit to his complaint, NRS 41A.071 requires a supporting medical affidavit for professional negligence claims, unless the NRS 41A.100 res ipsa loquitur exceptions apply. *See Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) (stating that a complaint asserting professional negligence claims without a supporting medical affidavit is void ab initio, but a medical affidavit is "not required if the claim falls into one of the enumerated res ipsa loquitur exceptions under NRS 41A.100(1)").

While Lageson summarily asserts that res ipsa loquitur applies, he fails to offer any cogent argument or explanation as to how the res ipsa loquitur exceptions apply to the facts in this case. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider arguments on appeal that are not cogently argued). Under these circumstances, we conclude that the district court properly dismissed Lageson's professional negligence claims

due to his failure to comply with NRS 41A.071's medical affidavit requirement.¹

Therefore, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

¹Although Lageson argues that the district court's order should be reversed because the court was "biased," nothing in the record before this court demonstrates that the district court's decisions in the underlying case were based on knowledge acquired outside of the proceedings or that its decisions otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted).

²To the extent Lageson raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. Danielle K. Pieper, District Judge
Eric Arthur Lageson
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk