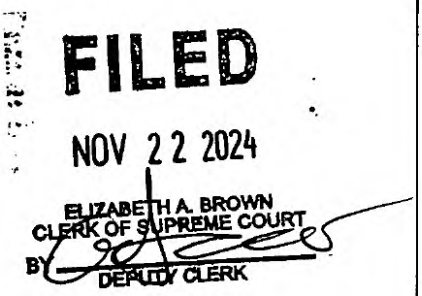
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMY M. HELT, AN INDIVIDUAL; AND SHAWN A. MANGANO, AN INDIVIDUAL,
Appellants,
vs.
RMDT LLC, A NEVADA DOMESTIC LIMITED LIABILITY COMPANY; HEATHER ALANNA BENSON, AN INDIVIDUAL; ERIKA DANIELLE SCHROEDER, AN INDIVIDUAL; AND KATHYRN CLARK MARTINEZ, AN INDIVIDUAL,
Respondents.

No. 87385-COA



ORDER OF AFFIRMANCE

Amy M. Helt and Shawn A. Mangano appeal from a district court order dismissing their complaint under NRCP 12(b)(5). Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

On January 4, 2023, Helt and Mangano filed a veterinary malpractice suit against respondents RMDT, LLC; Heather Alanna Benson; Erika Danielle Schroeder; and Kathyrn Clark Martinez (collectively RMDT) related to the alleged mistreatment of two of their dogs at RMDT's veterinary boarding clinic on or around December 31, 2018. In their second amended complaint, Helt and Mangano sought declaratory relief and stated claims for breach of contract, breach of the covenant of good faith and fair dealing, intentional misrepresentation, and veterinary malpractice, based on their allegations that RMDT "fail[ed] to follow Plaintiffs' boarding

instructions, misrepresent[ed] the health and condition of animals under their custody, control and care, administer[ed] prescription medication without either Helt or Mangano's informed consent, [and failed] to deliver the level of care and treatment necessary to maintain the health safety and welfare of [Helt and Mangano's dogs]."

Helt and Mangano also averred that, on January 10, 2019, they made a written request to the West Russell Animal Hospital (WRAH)—RMDT's veterinary hospital and boarding facility—for all medical records associated with the incident and received those medical records from WRAH on January 19, 2019. However, they further assert that "even after receipt of such records, a reasonable review [period] was necessary to identify potential causes of action against one or more of the Defendants [which] required at least two to three [additional] weeks of investigation." Helt and Mangano also asserted that the statute of limitations for their claims should be administratively tolled under the COVID-19 Emergency Directive and requested that the district court apply the equitable tolling doctrine to the time they had proceedings pending in front of the Nevada Board of Veterinary Examiners.

In lieu of an answer, RMDT filed a motion to dismiss wherein it argued that Helt and Mangano's complaint was untimely under NRS 11.207(1), which states that: "[a]n action against [a] veterinarian to recover damages for malpractice, whether based on a breach of duty or contract, must be commenced within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the material facts which constitute the

cause of action, whichever occurs earlier." In that motion, RMDT argued that, even when allowing four months of tolling based on the COVID-19 Emergency Directive, the complaint was untimely and should be dismissed.

In response, Helt and Mangano argued that they did not discover the true grounds underlying their causes of action until Helt discovered a Yelp review in late 2020 stating that the WRAH boarding clinic was understaffed. Further, Helt and Mangano argued that the motion to dismiss should be converted into a motion for summary judgment on the basis that the time that they discovered their causes of action is a disputed question of fact. Finally, Helt and Mangano included an alternative request to file a third amended complaint to include a deceptive trade practice claim under NRS 598.0915.[1]

After considering RMDT's reply and holding a hearing on the motion, the district court entered an order granting RMDT's motion to dismiss. In that order, the district court found that all of Helt and Mangano's causes of action were derivative of the veterinary malpractice claims and were subject to NRS 11.207(1)'s limitations period. Further, because Helt and Mangano pleaded in their complaint that they had received copies of the medical records on or before January 19, 2019, and that they had spent the next two to three weeks reviewing those records, the district court found that, under NRS 11.207(1) the two year statute of limitations period for discovery applies, and that February 16, 2019, is

[1]This request did not comply with EDCR 2.30(a), which requires the moving party to attach a copy of the proposed amended pleading to a motion to amend.

therefore the date on which the statute of limitations began to run. Accordingly, the court found that the statute of limitations expired on February 16, 2021, but took judicial notice of the COVID-19 Emergency Directive, which tolled the limitations period for four months, resulting in the statute of limitations expiring in June 2021. In total, the court concluded that the complaint should be dismissed because the complaint was filed three years, six months, and twenty days after the start of the two-year limitations period.

As to the request to amend the complaint, the court found that Helt and Mangano made no written motion to amend the complaint and that such an amendment would be futile anyway as the deceptive trade practices claim would be derivative of the veterinary malpractice claims. Helt and Mangano now appeal.

This court reviews a district court's order of dismissal for failure to state a claim pursuant to NRCP 12(b)(5) de novo, treating all alleged facts in the complaint as true and drawing all inferences in favor of the complainant. *Fausto v. Sanchez-Flores*, 137 Nev. 113, 114, 482 P.3d 677, 679 (2021). Under NRS 11.207(1), an action against a veterinarian "to recover damages for malpractice, whether based on a breach of duty or contract, must be commenced within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the material facts which constitute the cause of action, whichever occurs earlier."

On appeal, Helt and Mangano first argue that the district court erred by dismissing their claims under NRCP 12(b)(5) rather than

converting the motion to a motion for summary judgment. However, this argument is without merit. Our appellate courts have long recognized that a "district court may dismiss an action under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted when the action is barred by the statute of limitations." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998). And based on our review of appellants' briefing and the record on appeal, there is nothing to suggest that the district court considered matters beyond the pleadings when deciding the motion to dismiss such that conversion to a motion for summary judgment would be required. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (holding that when ruling on a motion to dismiss, a district court generally "may not consider matters outside the pleading being attacked" but may consider "matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling" on the motion).

Next, Helt and Mangano argue that the district court erred by failing to consider the appropriate "discovery period" and apply *Siragusa v. Brown*, 114 Nev. 1384, 1401, 971 P.2d 801, 812 (1998) (stating that "[o]nly where uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim should such a determination be made as a matter of law"), which they contend stands for the proposition that the statute of limitations only begins to run upon the discovery of all elements of a cause of action, including causation and damages. Relevant to this point, Helt and Mangano argue that they did not discover the true cause of their injuries until reading a Yelp review in "late

2020," which revealed that WRAH was "understaffed," and thus, they contend that the district court erred in determining that the statute of limitations began to run on February 16, 2019.

However, Helt and Mangano fail to present any cogent argument to explain how the discovery of the Yelp review was necessary to establish the facts constituting their causes of action against RMDT. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims that are not cogently argued). More specifically, they fail to explain how this Yelp review was necessary to learn of the allegations articulated in their complaint, which included "failing to follow Plaintiffs' boarding instructions[;] misrepresenting the health and condition of animals under their custody, control and care[;] administering prescription medication without either Helt or Mangano's informed consent[; and] failing to deliver the level of care and treatment necessary to maintain the health safety and welfare of [Helt and Mangano's dogs]."

This failure is especially salient here, where the allegations in Helt and Mangano's own complaint—when taken as true—demonstrate that Helt and Mangano were on inquiry notice of their claims against RMDT when they received the necessary medical records from WRAH in January 2019. As this court recently explained in the professional negligence context, "once the plaintiff or the plaintiff's representative has received all necessary medical records documenting the relevant treatment and care at issue, inquiry notice of a claim commences." *Igtiben v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 9, 545 P.3d 116, 117 (Ct. App. 2024).

Helt and Mangano's complaint alleged that they received and reviewed all medical records relevant to the breach of contract and veterinary malpractice claims in January 2019, and that these documents were sufficient for them to pursue an action with the Nevada Board of Veterinary Examiners setting forth the same claims and allegations. Indeed, Helt and Mangano's complaint indicates that they took several weeks to review the information received from WRAH, stating that "even after receipt of such records, a reasonable review [period] was necessary to identify potential causes of action against one or more of the Defendants [which] required at least two to three weeks of investigation, review and consultation with others in the animal welfare community." But despite setting forth this explanation for the timing of the filing of their complaint, Helt and Mangano's second amended complaint makes no mention of the "late 2020 Yelp review."

Accordingly, and in the absence of any cogent argument explaining how the "late 2020 Yelp review" was necessary for the discovery of the allegations set forth in their complaint, we conclude that the district court did not err in determining that the two-year statue limitations expired prior to the filing of their complaint. *See Bemis*, 114 Nev. at 1024, 967 P.2d at 439.

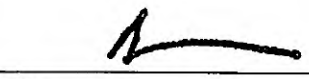
Finally, Helt and Mangano argue that the district court abused its discretion when it denied the request to amend their complaint to include a deceptive trade practices claim, which has a limitations period of four years under NRS 11.190(2)(d). We conclude that the district court did not abuse its discretion in denying this request, as Helt and Mangano's request

did not contain proper citations to authority or include a copy of the proposed amended complaint as required under EDCR 2.30(a). *See MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. 235, 239, 416 P.3d 249, 254 (2018) (reviewing the denial of a motion for leave to amend for an abuse of discretion).

Based on the foregoing, we affirm the judgment of the district court.

It is so ORDERED.[2]

_____, C.J.
Gibbons



_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge
Amy M. Helt
Shawn A. Mangano
Perry & Westbrook, P.C.
Eighth District Court Clerk

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[2]Insofar as Helt and Mangano raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.