

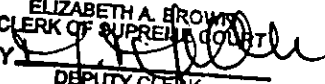
IN THE SUPREME COURT OF THE STATE OF NEVADA

MELINDA WARREN,  
Appellant,  
vs.  
RENO ORTHOPAEDIC CLINIC, LTD,  
DR. CHRISTENSEN, A NEVADA  
PROFESSIONAL CORPORATION,  
Respondent.

No. 87126

**FILED**

APR 01 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a negligence action. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Appellant Melissa Warren was a patient at respondent Reno Orthopaedic Clinic, LTD (“ROC”) between 2011 and 2013. ROC employed Dr. John Halki and Physician Assistant Kiersten Gregory. After undergoing spinal surgeries, Warren received post-operative care at ROC. At a post-operative appointment on January 22, 2013, Warren was provided medical services by PA Gregory. Around this time, ROC terminated Dr. Halki’s employment. After the post-operative appointment, Warren developed an infection and underwent an emergency surgery at a separate facility as a result. Warren filed a professional negligence complaint against Dr. Halki and PA Gregory, but that case settled.

While that litigation was pending, Warren filed the separate underlying complaint against ROC, alleging negligence and negligence per se. ROC moved to dismiss the complaint, arguing that Warren’s claims fell under the professional negligence umbrella and she failed to support her

complaint with an affidavit from a medical expert. The district court denied the motion, finding that the “claims [were] based upon administrative decisions of the healthcare business and not solely claims of medical malpractice” and, therefore, Warren was not required to comply with NRS 41A.071.

At a pre-trial conference, the district court ordered supplemental briefing on the professional negligence issue, requesting that the parties brief whether an expert would be required to testify on the standard of care. The district court determined its earlier order denying ROC’s motion to dismiss did not foreclose a later argument that the claims were based in professional negligence.

In its brief, ROC maintained that the gravamen of Warren’s claims was inextricably linked to the delayed diagnosis and treatment of her infection and thus sounded in professional negligence. Warren responded that her claims sound in ordinary negligence because standard of care testimony is not required to prove her case that ROC was negligent in its corporate decisions precluding Dr. Halki from seeing patients immediately upon his termination and inadequately supervising PA Gregory after terminating Dr. Halki’s employment, and none of ROC’s alleged negligent actions involved medical judgment or her treatment or diagnosis.

After considering the parties’ arguments, the district court dismissed the complaint, concluding that Warren’s claims sounded in professional negligence because they pertained to actions that occurred within the course of a professional relationship with ROC and raised questions of medical judgment that went beyond common knowledge. Even if the claims were for ordinary negligence, the district court determined that

they were inextricably intertwined with the underlying professional negligence that allegedly caused Warren's injury. Warren appeals.

*The district court did not err in applying a motion to dismiss standard*

Warren argues that the district court erred in applying a motion to dismiss standard because no motion to dismiss was pending and both ROC and Warren relied on evidence outside of the pleadings in their briefing. Warren argues that she was prejudiced by the district court's decision to treat the supplemental trial statement as a motion to dismiss because she was not able to seek amendment of her complaint.

Under the circumstances, we conclude that the district court properly treated and disposed of ROC's argument as a motion to dismiss. In particular, a professional negligence complaint filed without a supporting affidavit is void ab initio and subject to dismissal. *Borger v. Eighth Jud. Dist. Ct.*, 120 Nev. 1021, 1028, 102 P.3d 600, 605 (2004) ("[B]ecause NRS 41A.071 governs the threshold requirements for initial pleadings in medical malpractice cases, not the ultimate trial of such matters, we must liberally construe this procedural rule of pleading in a manner that is consistent with our NRCP 12 jurisprudence."); *Gallen v. Eighth Jud. Dist. Ct.*, 112 Nev. 209, 212, 911 P.2d 858, 859-860 (1996) (observing that NRCP 12(d) only requires a conversion to a summary judgment standard where the district court "actually considers materials outside the pleadings in resolving the motion"). While we are cognizant of the unusual procedural posture in treating ROC's trial statement as a motion to dismiss, we are not persuaded by Warren's argument that she was prejudiced under the circumstances here, particularly given the opportunity provided to the parties for briefing before decision by the district court. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006) (concluding "a complaint filed without a

supporting medical expert affidavit is void ab initio” and “[b]ecause a void complaint does not legally exist, it cannot be amended.”). Because the district court did not rely on materials outside the pleadings as the basis for its decision and evaluated whether the complaint met the requirements of NRS 41A.071 as a matter of law, it did not err in applying the motion to dismiss standard here.

*The district court properly found that Warren’s claims sounded in professional negligence*

Warren asserts that ordinary negligence standards apply to her claims because they are grounded on allegations that ROC did not follow its business procedures for the transition of care when it fired Dr. Halki. In particular, Warren argues that because the allegations in her complaint pertained to ROC locking Dr. Halki out of ROC’s medical offices while knowing that this prevented him from supervising PA Gregory during Warren’s medical appointment, her complaint was based on claims of negligent, unreasonable business decisions, rather than professional negligence.

“We review the 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. 729, 731, 519 P.3d 37, 40 (2022). The district court must dismiss without prejudice a complaint for professional negligence if the complaint is filed without an affidavit of merit from a medical expert. NRS 41A.071.

Nevada defines professional negligence 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. On the other hand, when the claim does not concern a healthcare provider’s

provision of medical services, ordinary negligence standards apply, under which “medical facilities have a duty to exercise reasonable care to avoid foreseeable harm.” *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 641, 403 P.3d 1280, 1284 (2017) (quoting *DeBoer v. Senior Bridges of Sparks Fam. Hosp. Inc.*, 128 Nev. 406, 412, 282 P.3d 729, 732 (2012)). In determining whether a claim sounds in professional or ordinary negligence, the focus is on “the nature of the conduct” and whether the claim “involves a provider of health care rendering services in a way that causes injury.” *Limprasert v. PAM Specialty Hosp. of Las Vegas LLC*, 140 Nev., Adv. Op. 45, 550 P.3d 825, 831 (2024). A claim lies in professional negligence when it is based on “[a]llegations of breach of duty involving medical judgment, diagnosis, or treatment.” *Szymborski*, 133 Nev. at 642, 403 P.3d at 1284. If the claim does not “pertain[ ] to an action that occurred within the course of a professional relationship,” it is not professional negligence but ordinary negligence. *Limprasert*, 140 Nev. at \_\_\_, 550 P.3d at 835.

Applying these standards, we perceive no error in the district court’s conclusion that the complaint stated claims based on professional negligence and was therefore subject to the affidavit requirement in NRS 41A.071. Warren was in a professional relationship with ROC at the time of her injury. The gravamen of Warren’s negligence claim is that ROC exercised poor medical judgment and treatment that did not meet the standard of care by preventing Dr. Halki from contacting his patients or supervising PA Gregory. Her injuries, she alleges, were a direct result of a lapse in care. These types of decisions are rooted in providing care to patients. Similarly, the gravamen of Warren’s negligence per se claim is that ROC permitted PA Gregory to see patients without the supervision of Dr. Halki as required by Nevada law and, as a result, Warren received

treatment that fell below the standard of care, sustaining injuries. Both claims are intertwined with the underlying professional negligence claim that Dr. Halki's lack of supervision over PA Gregory and a lapse in care resulted in the failure to diagnose and treat Warren's infection, which caused her injuries. These claims do not stem from nonmedical actions but rather are grounded in decisions involving patient treatment, which require an expert affidavit to support the allegations. *See Yafchak*, 138 Nev. at 731, 519 P.3d at 40 (observing that where a complaint asserts that an employer is directly liable for negligent hiring, training, and supervision decisions, "the complaint against the employer may be subject to the affidavit requirement if the underlying tortfeasor employee's negligence constitutes professional negligence"); *Est. of Curtis v. S. Las Vegas Med. Invs., LLC*, 136 Nev. 350, 354, 466 P.3d 1263, 1267 (2020) (concluding that NRS 41A.071's affidavit requirement applied where the claims were "inextricably linked" to the underlying professional negligence), *overruled on other grounds by Limprasert*, 140 Nev. at \_\_\_, 550 P.3d at 831; *cf. DeBoer*, 128 Nev. at 411-12, 282 P.3d at 732 (determining that a claim sounded in ordinary negligence where a caregiver misappropriated the patient's assets); *Szymborski*, 133 Nev. at 642, 403 P.3d at 1283-84 (determining that a claim sounded in ordinary negligence where medical providers discharged a patient to a location they knew he should not be discharged resulting in property damage).

Because Warren's claims were subject to NRS 41A.071 and she failed to file a medical expert affidavit with her complaint against ROC, the district court properly dismissed her complaint. Given this disposition, we do not address Warren's arguments regarding ROC's redaction of certain

documents in the course of discovery as these issues are rendered moot.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

                    Pickering                    , J.  
Pickering

                    Cadish                    , J.  
Cadish

                    Lee                    , J.  
Lee

cc: Hon. Kathleen M. Drakulich, District Judge  
Kristine M. Kuzemka, Settlement Judge  
Matthew L. Sharp, Ltd.  
Stephen H. Osborne, Ltd.  
McBride Hall  
Washoe District Court Clerk