

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT PETERSON,  
Appellant,  
vs.  
DR. JON L. SIEMS, M.D.,  
INDIVIDUALLY; AND JON L. SIEMS,  
M.D., PROFESSIONAL CORPORATION  
D/B/A SIEMS LASIK & EYE CENTER,  
A NEVADA CORPORATION,  
Respondents.

No. 88987-COA

**FILED**

**AUG 12 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Scott Peterson appeals from a district court order granting a motion for judgment on the pleadings in a professional negligence action. Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Peterson initiated a civil action for professional negligence against respondents Dr. Jon L. Siems, M.D., and Jon L. Siems, M.D., Professional Corporation d/b/a Siems Lasik & Eye Center (collectively respondents) in May 2023. The complaint alleged that Peterson retained respondents to perform a photorefractive keratectomy (PRK) on both of Peterson's eyes which was completed on or about May 27, 2017. Peterson had multiple follow-up treatments but still had medically adverse conditions in his left eye. In December 2019, respondents performed a phototherapeutic keratectomy (PTK) on his left eye to remove scar tissue. However, Peterson continued to have vision related problems. In November 2021, Dr. Siems recommended Peterson have a PTK procedure on the left

eye with amniotic membrane. The procedure was scheduled for December 2021; however, when Peterson presented to the facility, Dr. Siems apparently persuaded Peterson to allow him to perform a corneal scraping of the left eye rather than the planned PTK procedure. The complaint asserted that, following the procedure, Peterson's eye did not improve and became worse. When Peterson sought alternative care with other specialists, they advised that his left eye cornea was too thin to undergo the corneal scraping procedure and that the eye was now damaged. The complaint claimed that "the corneal scraping performed by Dr. Siems was inappropriate, misdiagnosed and should not have been recommended or performed." Thus, Peterson asserted a claim for professional negligence, which alleged that respondents had a duty to provide appropriate medical care to Peterson and breached this duty by engaging in negligent actions which contributed to damage to his left eye. Peterson asserted that he now suffered vision reduction and vision loss in his left eye.

Peterson attached to his complaint an expert affidavit from Dr. Todd A. Lefkowitz, M.D., FACS. The expert affidavit provided Dr. Lefkowitz's background and qualifications, listed records he reviewed, stated a chronology of events and then provided a discussion and conclusion which stated that

PRK is a proven surgical treatment for refractive error. One complication that can occur is post-operative corneal haze. Corneal scraping is indicated in corneal haze patients, but care must be taken to avoid corneal thinning which in turn can lead to ectasia. There were no apparent problems with the manner in which the PRK was performed. Unfortunately, corneal haze resulted. Had the haze not occurred, it is unlikely that further

thinning and possible ectasia might have been prevented. I hold these opinions to the highest degree of medical probability.

Respondents filed an answer. Subsequently, in March 2024, respondents filed a motion for judgment on the pleadings pursuant to NRCP 12(c) arguing that no viable claim had been raised by Peterson. Specifically, respondents argued that the expert affidavit failed to assert that Dr. Siems breached the standard of care in the performance of the corneal scraping procedure, much less how any purported breach occurred, and that the corneal haze for which Dr. Siems provided the corneal scraping was not the result of professional negligence. Thus, respondents argued that the complaint was not supported by the expert affidavit. Peterson filed an opposition, asserting that respondents failed to prove they were entitled to judgment as a matter of law as discovery had only recently commenced, there were open and disputed factual questions regarding Dr. Siems' lack of experience and whether or not Dr. Siems properly advised Peterson of the risks of the procedure, and that these disputed questions of fact remained for further development through discovery.

After a hearing, the district court granted the motion and dismissed the complaint. The court found that the expert medical affidavit failed to identify a specific act or acts of alleged negligence. The court further determined that the affidavit did not support the allegations contained in Peterson's complaint because it did not opine that any breach of the standard of care took place, "nor does it identify by name or conduct any provider of health care that was allegedly negligent [or] set forth factually specific[ ] acts of alleged negligence." As a result, the court

granted the motion for judgment on the pleadings in its entirety and dismissed the matter with prejudice. This appeal followed.

On appeal, Peterson argues that the district court improperly granted respondents' motion for judgment on the pleadings and dismissed the case, arguing that disputed factual issues remained which rendered granting the NRCP 12(c) motion inappropriate. He further asserts that the affidavit should have been considered in conjunction with the complaint, and that, when read together, the complaint and affidavit supported the allegations contained in the complaint and sufficiently complied with NRS 41A.071.

Conversely, respondents assert, among other things, that Peterson's argument with regard to the district court reading the complaint in conjunction with his expert affidavit were not sufficiently raised below.<sup>1</sup> Nevertheless, respondents argue that, even when reading the complaint together with the affidavit, dismissal was proper as the affidavit failed to state any breach in the standard of care. Thus, respondents assert Peterson failed to state a claim for which relief could be granted. Furthermore, respondents assert that the failure to comply with NRS 41A.071 is grounds for dismissal and, thus, Peterson's arguments with respect to disputes of fact are without merit.

"Under NRCP 12(c), the district court may grant a motion for judgment on the pleadings when the material facts of the case are not in

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<sup>1</sup>While respondents are correct that Peterson did not raise this specific argument below, this argument is made on appeal in response to the direct findings made by the district court in dismissing the complaint, and thus we address it on the merits.

dispute and the movant is entitled to judgment as a matter of law.” *Sadler v. PacifiCare of Nev.*, 130 Nev. 990, 993, 340 P.3d 1264, 1266 (2014) (internal quotation marks omitted). “Because an order granting a motion for judgment on the pleadings presents a question of law, our review of such an order is de novo.” *Id.* “As with a dismissal for failure to state a claim, in reviewing a judgment on the pleadings, we will accept the factual allegations in the complaint as true and draw all inferences in favor of the nonmoving party.” *Id.* at 993-94, 340 P.3d at 1266. 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 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. Inv., LLC*, 138 Nev. 729, 731, 519 P.3d 37, 40 (2022).

NRS 41A.071 sets forth the requirements for an affidavit of merit in a professional negligence case. This statute requires that, in any professional negligence action, the complaint must be accompanied by an affidavit of merit that, among other things, “[s]ets forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms.” NRS 41A.071(4). The Nevada Supreme Court has explained that “the district court should read a medical malpractice complaint and affidavit of merit together when determining whether the affidavit meets the requirements of NRS 41A.071.” *Zohar v. Zbiegien*, 130 Nev. 733, 735, 334 P.3d 402, 403 (2014). To that end, “the district court in each instance should evaluate the factual allegations contained in both the affidavit and the medical malpractice complaint to determine whether the

affidavit adequately supports or corroborates the [plaintiff's] allegations.” *Id.* at 741, 334 P.3d at 407. Thus, “an affidavit of merit can adequately support a complaint’s allegations of professional negligence when it opines as to the professional standard of care and the breach of that standard of care.” *Engelson v. Dignity Health*, 139 Nev. 578, 593, 542 P.3d 430, 444 (Ct. App. 2023).

In *Zohar*, the supreme court deemed the expert affidavit sufficient to satisfy the support requirement of NRS 41A.071 where the complaint alleged specific conduct by individual hospital employees, and where the expert affidavit opined that “the medical staff in the emergency department of [the hospital] breached the standard of care in their treatment of [the injured patient].” *Zohar*, 130 Nev. at 741, 334 P.3d at 407. In contrast, in *Monk v. Ching*, the supreme court examined the affidavit in conjunction with the complaint and concluded that NRS 41A.071 was not satisfied when neither document “adequately identifie[d] the specific roles played[] by each individual respondent” or identified “the relevant standards of care or any opinion as to how, or even whether, each respondent breached that standard to a reasonable degree of medical probability.” 139 Nev. 155, 157, 531 P.3d 600, 602 (2023).

Applying the foregoing analysis to the situation presented here, we conclude that the expert affidavit was deficient. Although Peterson attached an expert affidavit to the complaint, the affidavit did not opine as to the relevant standards of care or offer any opinion as to how, or even whether, Dr. Siems breached any such standard to a reasonable degree of medical probability. Instead, the affidavit avers, in reference to the PRK procedure, that “one complication that can occur is post-operative corneal

haze,” and that “there were no apparent problems with the manner in which the PRK was performed.” The affidavit then goes on to provide that “[c]orneal scraping is indicated in corneal haze patients, but care must be taken to avoid corneal thinning which in turn can lead to ectasia.”

Even when read in conjunction with the complaint, *see Zohar*, 130 Nev. at 739, 334 P.3d at 406, the affidavit does not sufficiently specify any acts of negligence as to Dr. Siems, or express an opinion as to the medical standard of care Dr. Siems breached. *See Monk*, 139 Nev. at 157, 531 P.3d at 603 (concluding that the affidavit was insufficient where the affidavit did “not sufficiently specify the acts of negligence as to each respondent, or express an opinion as to the medical standard of care the respondent breached”). Notably, the affidavit does not corroborate the allegations contained in the complaint. Instead, the affidavit submits that there were no problems with the PRK and that “care must be taken” while performing a corneal scraping without indicating that Dr. Siems breached any standard of care, while the complaint alleged that the procedure performed by Dr. Siems “was inappropriate, misdiagnosed, and should not have been recommended or performed by Defendant Dr. Siems.”


Consequently, we conclude that the expert affidavit attached to Peterson’s complaint did not satisfy NRS 41A.071’s requirements as to the claims against respondents. *See id.* And when an action is filed against a provider of health care for professional negligence without an adequate expert affidavit as required by NRS 41A.071, the complaint is void ab initio and cannot be amended to cure the deficiency such that the professional negligence claim must be dismissed. *Washoe Med. Ctr.*, 122 Nev. at 1300, 148 P.3d at 792. As a result, to the extent Peterson asserts that there

remained disputes of fact with respect to his allegations rendering an NRCP 12(c) motion inappropriate, we are unpersuaded by this point because Peterson's complaint was rendered void ab initio due to the deficient expert affidavit. *See* NRS 41A.071 (providing the district court shall dismiss an action for professional negligence if it was filed without the requisite affidavit from a medical expert). Accordingly, we conclude that the district court did not err by granting the motion for judgment on the pleadings and dismissing the complaint.

Therefore, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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<sup>2</sup>To the extent the parties raise 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. Veronica Barisich, District Judge  
James J. Jimmerson, Settlement Judge  
Kirk T. Kennedy  
Giovanniello Law Group  
Eighth District Court Clerk