

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN J. FITZSIMMONS,

Appellant,

vs.

LAWRENCE D. WISHART,

Respondent.

No. 38400

FILED

DEC 13 2001

WINETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a legal malpractice action. The district court concluded that no attorney-client relationship existed between respondent Lawrence D. Wishart and appellant Kevin J. Fitzsimmons because they did not have a contract and Wishart never appeared as an attorney of record for Fitzsimmons in any action.

An order granting an NRCP 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted is subject to rigorous appellate review.¹ This court construes the pleadings liberally and accepts all factual allegations as true.² A complaint should not be dismissed "unless it appears to a certainty that the plaintiff is not entitled to relief under any set of facts which could be proved in support of the claim."³ A legal malpractice action requires the existence of an attorney-client relationship, along with a duty owed to the client, a breach of that duty, the breach proximately causing the client's damages, and actual loss or damage.⁴

¹See Bratcher v. City of Las Vegas, 113 Nev. 502, 507-08, 937 P.2d 485, 489 (1997) (citing Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994)).

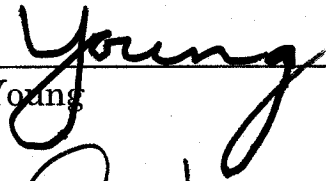
²See id.

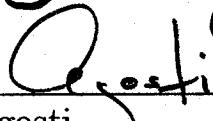
³Hale v. Burkhardt, 104 Nev. 632, 636, 764 P.2d 866, 868 (1988).


⁴See Allyn v. McDonald, 112 Nev. 68, 910 P.2d 263 (1996).

Having reviewed the record, we conclude that the district court did not err in dismissing the complaint. Appellant failed to allege sufficient facts demonstrating that an attorney-client relationship existed between him and respondent in order to sustain a legal malpractice action. According, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven R. Kosach, District Judge
Lawrence D. Wishart
Kevin J. Fitzsimmons
Washoe County Clerk

⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.