

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE ESTATE OF BRANDEN J.
HERMANSEN, BY AND THROUGH ITS
PERSONAL REPRESENTATIVE,
NANCY HERMANSEN; AND NANCY
HERMANSEN, INDIVIDUALLY,

Appellants,

vs.


NEVADA DEPARTMENT OF
CORRECTIONS; CHARITY KNOX, R.N.;
MICHAEL MINEV, M.D.; AND MARTIN
NAUGHTON, M.D.,

Respondents.

No. 88202

FILED

JAN 30 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING*

This is an appeal from a district court order of dismissal. Eleventh Judicial District Court, Pershing County; Bryce Shields, Judge.

This case arises from the death of Branden Hermansen while incarcerated at the Lovelock Correctional Center, operated by the Nevada Department of Corrections (NDOC). When Hermansen began experiencing chest pain and difficulty breathing, he was treated by staff at the prison infirmary. Hermansen died the following day. Hermansen's wife, appellant Nancy Hermansen, acting in her personal capacity and as representative of Hermansen's estate, subsequently sued respondents NDOC, Charity Knox, R.N.; Michael Minev, M.D.; and Martin Naughton, M.D. in their individual and official capacities.

The complaint alleged civil rights claims under 42 U.S.C. § 1983 (claims 1 and 2); civil rights violations under article 1, section 18 of the Nevada Constitution (claim 3); municipal liability (claim 4); professional

negligence and wrongful death (claims 5 and 6); and vicarious liability (claim 7). Claims 1, 3, and 5-6 were alleged against all defendants. Claim 2 was alleged against NDOC and Dr. Minev, and claims 4 and 7 were brought exclusively against NDOC. Nancy initially attached an affidavit of merit to her complaint. But shortly after filing the complaint she amended it to correct a typographical error, and in doing so failed to attach the affidavit of merit. Respondents moved to dismiss the amended complaint. The district court dismissed Nancy's case in its entirety. It dismissed Nancy's federal claims (1, 2, 4, and 7) with prejudice, and her state law claims (3, 5, 6, and 7) without prejudice. Because the district court gave no explanation for its conclusion that claim 7 was both a state law claim and a federal claim we resolve any doubts here by treating it as if it were a federal claim dismissed with prejudice.¹

On appeal, we consider Nancy's assertions that the district court erred in (1) dismissing the state law claims for failure to file an NRS 41A.071 affidavit of merit; (2) dismissing claim 3 because it does not sound in professional negligence, and thus did not require compliance with NRS 41A.071; (3) dismissing claims 1 and 2 against Dr. Minev with prejudice and not allowing her to amend her complaint; and (4) dismissing claim 1 with prejudice because Nancy alleged sufficient facts to state a claim or, alternatively, not allowing her to amend the complaint. We also consider

¹The district court generally referred to claims 3, 5, 6, and 7 as the state law claims. While the order granting NDOC's motion to dismiss characterized claim 4 as both a state law claim and a federal claim, context suggests that the court properly understood claim 4 as a federal claim. We understand the reference to "state law claims" as referring to claims 3, 5, and 6.

respondents' assertion, made for the first time on appeal, that the district court lacked subject matter jurisdiction over Nancy's state law claims.

When considering an appeal from an order granting a motion to dismiss this court engages in a rigorous de novo standard of review. *Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012). We review whether the district court erred in denying Nancy leave to amend her complaint as to the federal claims for an abuse of discretion. *See Burnett v. C.B.A. Sec. Serv., Inc.*, 107 Nev. 787, 789, 820 P.2d 750, 752 (1991).

The affidavit of merit was properly attached

The district court erred in dismissing the state law claims based on Nancy's failure to attach an affidavit of merit to her amended complaint. NRS 41A.071. NRS 41A.071 provides that "[i]f an action for professional negligence is filed in the district court, the district court shall dismiss the action, without prejudice, if *the action* is filed without an affidavit" (Emphasis added). "When interpreting a statute, we look to the statute's plain language." *R.J. Reynolds Tobacco Co. v. Eighth Jud. Dist. Ct.*, 138 Nev. 585, 589, 514 P.3d 425, 429 (2022). Critically, the plain language of the statute here requires dismissal where "the *action* is filed without an affidavit." NRS 41A.071 (emphasis added). "A civil action is commenced by filing a complaint with the court." NRCP 3; *see also Facklam v. HSBC Bank USA*, 133 Nev. 497, 499, 401 P.3d 1068, 1070 (2017) ("Civil actions are commenced when a party files a complaint with the court.").

Here, the record shows that Nancy attached Nurse Pearson's affidavit to the original complaint, *i.e.* when "the action [was] filed." Unless there are substantive changes made in the amended complaint that would necessitate the filing of new or amended affidavit of merit, the act of attaching the affidavit to the initial pleading is sufficient to satisfy NRS

41A.071's mandate. Nothing in the record before us demonstrates the need for the redundant re-attachment of the original affidavit of merit to Nancy's amended complaint. Nancy's amended complaint merely corrected a typographical error and did not assert any new allegations or claims. Accordingly, we conclude that the affidavit of merit attached to Nancy's initial pleading was sufficient to satisfy the procedural mandates of NRS 41A.071.

The affidavit was sufficient as to NDOC and Nurse Knox only

Notwithstanding the procedural soundness of Nancy's timely filing of the affidavit of merit, the affidavit must also meet the substantive requirements of the statute. NRS 41A.071 provides that an affidavit of merit must (1) support the allegations contained in the action; (2) be submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged professional negligence; (3) identify by name or describe by conduct each provider of health care who is alleged to be negligent; and (4) set forth factually the specific acts of alleged negligence as to each defendant in simple, concise, and direct terms.

Reading the "medical malpractice complaint and affidavit of merit together [to] determin[e] whether the affidavit meets the requirements of NRS 41A.071," *De Becker v. UHS of Delaware, Inc.*, 140 Nev., Adv. Op. 58, 555 P.3d 1192, 1198 (2024), we conclude that NRS 41A.071's first three requirements are satisfied as to all respondents. The affidavit plainly supports the allegations in the complaint, and the alleged inconsistencies raised by respondents do not undermine the affidavit's support. Nor are we persuaded by respondents' argument that Nurse Pearson is insufficiently qualified to provide an affidavit of merit in this

case, as NRS 41A.071 permits affidavits from an expert in a “substantially similar” type of practice. Respondents fail to cite any authority requiring an affiant to have experience treating the exact distress or symptoms suffered by the decedent to satisfy NRS 41A.071. The affidavit also satisfies the third requirement as it identifies Nurse Knox by name, and alleges that NDOC and Lovelock’s nursing staff and administration were negligent. Upon reading the affidavit together with the complaint, we can conclude that the affidavit’s reference to nursing staff and administration refers to the acts and omissions of Dr. Naughton and Dr. Minev, who are described in the complaint.

We also conclude that the fourth prong was satisfied as to the NDOC and Nurse Knox because the affidavit and complaint together set forth specific acts of alleged negligence as to both defendants. However, Nancy’s affidavit fails the fourth prong of NRS 41A.071’s requirements as against Dr. Minev and Dr. Naughton. In the affidavit, Dr. Naughton and Dr. Minev are grouped together, and their negligence is alleged in general, non-specific terms, which is insufficient to satisfy NRS 41A.071. *See De Becker*, 140 Nev., Adv. Op. 58, 555 P.3d at 1198-99. Accordingly, we affirm the dismissal of the state law claims against Dr. Minev and Dr. Naughton and reverse the dismissal of the state law claims against NDOC and Nurse Knox.

The district court properly dismissed Nancy’s third claim for relief

We turn now to the district court’s dismissal of Nancy’s claim for violation of Article 1, Section 18 of the Nevada Constitution, based on Nancy’s failure to state a claim upon which relief can be granted. *See* NRCP 12(b)(5). Article 1, Section 18 of the Nevada Constitution states that “[t]he right of the people to be secure in their persons, houses, papers and effects

against unreasonable seizures and searches shall not be violated” Nev. Const. art. 1, § 18. Nancy argues that the district court erred (1) in dismissing this claim for failure to state a claim; and (2) by construing this claim as sounding in professional negligence under NRS 41A.015, thus warranting dismissal under NRS 41A.071 for failure to comply with the affidavit of merit requirement.

Nancy does not cogently argue nor otherwise explain how Hermansen’s reasonable expectation of privacy was violated, or in what manner he was unreasonably searched or seized. Even if we were to credit Nancy’s argument that respondents were professionally negligent, such conduct does not equate to an illegal search and seizure. We therefore affirm the district court’s dismissal of Nancy’s third claim for relief.²

The district court abused its discretion in dismissing Nancy’s federal claims with prejudice

Absent any apparent or declared reason, such as “undue delay, bad faith[,] or dilatory motive on the part of the movant,” leave to amend should be freely given. *Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973). But leave to amend should not be granted if a proposed amendment would be futile. *Gardner v. Eighth Jud. Dist. Ct.*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017). Moreover, “[t]he liberality embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments that appear arguable or even borderline” *Id.* (quoting *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 292, 357 P.3d 966, 975 (Ct. App. 2015)). However, we have observed that “outright refusal to

²Because we conclude that Nancy failed to state a claim under NRCP 12(b)(5), we need not consider whether the district court erred in concluding the claim sounded in professional negligence.

grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion” and inconsistent with the intent of NRCP 15(a). *Adamson v. Bowker*, 85 Nev. 115, 122, 450 P.2d 796, 800-01 (1969) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)); see also *Dunmore v. Babaoff*, 386 N.W.2d 154, 157 (Mich. Ct. App. 1985) (“A denial of . . . a motion [for leave to amend], although discretionary, must be supported by specific findings as to why justice would not be served by the amendment.”).

Here, the district court erred in dismissing claims 1 and 2 against Dr. Minev, claim 1 against Dr. Naughton and Nurse Knox, and claim 7 against NDOC with prejudice rather than granting Nancy leave to amend, or alternatively, making an express finding of futility. As we explained, the district court characterized claim 7 against NDOC as a state law claim and a federal claim, which it dismissed with prejudice. To resolve all doubts on this point we consider the dismissal of claim 7 with the other dismissed federal claims. The district court dismissed these federal claims based on Nancy’s failure to allege essential elements of the claims. While the district court correctly noted that dismissing a complaint with prejudice is appropriate when amendment is futile, it did not proceed to engage in a futility analysis. Thus, it is unclear from the record why permitting Nancy to amend her claims was futile, or why the dismissal of Nancy’s claims with prejudice was otherwise appropriate.

Accordingly, we hold that the district court abused its discretion in denying Nancy leave to amend her complaint as to the federal claims against Dr. Minev, Dr. Naughton, and Nurse Knox. Accordingly, we reverse and remand with instructions to either entertain Nancy’s motion to amend

her complaint or submit sufficient findings of futility justifying dismissal with prejudice.

Nancy may amend her complaint to comply with NRS 41.031 on remand

Lastly, respondents argue that the district court lacked subject matter jurisdiction over Nancy's state law claims because Nancy failed to invoke the Legislature's waiver of sovereign immunity by failing to name "The State of Nevada" as required by NRS 41.031.

Because we remand for further findings, we need not reach the jurisdictional questions posed by NRS 41.031. Any deficiencies in the pleading caption may be cured by amendment, should the district court grant leave to amend. *See Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) ("[W]hen a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the preferred remedy."); *see also Performance Steel, Inc. v. Wallner Tooling/Expac, Inc.*, 2021 WL 2432537, at *5 (Nev. June 11, 2021) (Order Reversing, Vacating, and Remanding) ("A party may amend its complaint on remand following an appeal, and such leave should be freely given unless it would cause serious prejudice to the opposing party."). There is nothing in the record before us to suggest that granting Nancy leave to amend her complaint to cure any deficiencies implicated by NRS 41.031 would unduly prejudice the State, as it had sufficient notice of the litigation through its representation of NDOC. We therefore

ORDER the judgment of the district court AFFIRMED as to the dismissal without prejudice of claim 3 against all parties, and the dismissal without prejudice of claims 5 and 6 against Dr. Naughton and Dr. Minev; REVERSED as to the dismissal of claims 5 and 6 against NDOC and Nurse Knox without prejudice, and as to the dismissal of claims 1 and 2 against

Dr. Minev, claim 1 against Dr. Naughton and Nurse Knox, and claim 7 against NDOC, with prejudice; and REMAND this matter to the district court for proceedings consistent with this order, including permitting Nancy to amend her complaint as to the federal claims or to make express findings of futility.

 Pickering , J.
Pickering

 Cadish , J.
Cadish

 Lee , J.
Lee

cc: Hon. Bryce Shields, District Judge
Jonathan L. Andrews, Settlement Judge
H&P Law, PLLC
Attorney General/Carson City
Attorney General/Las Vegas
Clerk of the Court/Court Administrator