



IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE CASTILLO,
Appellant,
vs.
ATKINSON WATKINS & HOFFMANN,
LLP; AND BURK INJURY LAWYERS,
Respondents.

No. 89421

Appeal from a post-judgment order adjudicating attorney liens in a professional negligence action. Eighth Judicial District Court, Clark County; Maria Gall, Judge.

Reversed and remanded.

Law Office of Bradley L. Boone and Bradley L. Boone, Las Vegas,
for Appellant.

Claggett & Sykes Law Firm and Charles L. Finlayson, Sean K. Claggett,
Micah S. Echols, and David P. Snyder, Las Vegas,
for Respondents.

BEFORE THE SUPREME COURT, STIGLICH, CADISH, and LEE, JJ.

OPINION

By the Court, STIGLICH, J.:

Nevada has adopted a system of financial caps for medical professional negligence claims. NRS 41A.035 limits the amount of noneconomic damages a plaintiff can receive for such claims, and NRS 7.095

caps the amount of contingent fees an attorney can recover. Under the caps, plaintiffs may receive a smaller award on professional negligence claims but will retain a higher percentage of it.

Appellant Jesse Castillo retained lawyers on a contingency fee basis to pursue medical professional negligence claims. In representing him, Castillo's lawyers asserted an ordinary negligence claim against the medical defendants alongside professional negligence claims. The case settled for a confidential amount. Afterward, Castillo's lawyers argued that the ordinary negligence claim took the settlement award outside the scope of NRS 7.095, such that Castillo owed them the full amount contemplated in the contingency fee agreements. Castillo disagreed, asserting that the ordinary negligence claim sounded in professional negligence, such that the NRS 7.095 cap applied. The district court ruled in favor of Castillo's former attorneys and ordered him to pay the full amount under the contingency fee agreement.

We agree with Castillo. Under *Limprasert v. PAM Specialty Hospital of Las Vegas LLC*, 140 Nev., Adv. Op. 45, 550 P.3d 825 (2024), the ordinary negligence claim sounded in professional negligence. The NRS 7.095 cap thus applies to Castillo's settlement, and Castillo owes his former attorneys only as much as the statute prescribes. We therefore reverse the district court's order and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

Castillo visited a hospital to treat back pain and left partially paralyzed. He sued the hospital, doctors, and several others involved in his medical care for medical malpractice, retaining respondent attorney Christopher Burk to represent him. Castillo signed a contingency fee

agreement, committing to pay Burk (a) 33 1/3% if the matter was settled before the lawsuit was filed, (b) 40% if settled after the suit was filed, (c) 45% if settled within 45 days of trial, or (d) 50% if an appeal was involved. Burk, in turn, retained attorneys from respondent law firm Atkinson Watkins & Hoffman, LLP (AWH) as co-counsel. Castillo's agreement with AWH required Castillo to pay (a) 40% if the case resolved without an appeal or (b) 50% if an appeal was involved.

Burk and AWH filed a complaint alleging claims of professional negligence. Castillo's lawyers amended the complaint several times, at one point adding an ordinary negligence claim.¹ The defendants opposed the ordinary negligence claim, arguing that it was a repackaged professional negligence claim. The district court, after applying the then-current *Estate of Curtis* test,² found that the proposed claim could sound in ordinary negligence such that amendment was permissible. While the defendants moved for summary judgment, the parties settled for a confidential amount before the district court heard argument on the matter.

The relationship between Castillo and his attorneys broke down after the settlement. Burk received the settlement award in two checks. One check arrived on September 7, 2023, and the other on September 14, 2023. Also on September 7, Castillo received a bill from Burk, and Castillo retained new counsel to dispute the fees Burk and AWH claimed he owed. Burk sent two notices of different attorney liens to Castillo by certified

¹At oral argument before this court, AWH represented that this addition was made without consulting Castillo.

²*Est. of Curtis v. S. L.V. Med. Invs., LLC*, 136 Nev. 350, 356, 466 P.3d 1263, 1268 (2020), *abrogated in part by Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 831.

mail—one asserting Burk’s rate and the other asserting AWH’s rate, dated September 13, 2023, and September 29, 2023, respectively. The record reflects that Castillo agreed to pay what NRS 7.095 required; the record is not clear, however, on whether payment has been made.

AWH and Burk moved to adjudicate the attorney lien.³ Castillo opposed, arguing that (1) AWH failed to perfect the lien; (2) NRS 7.095 capped the recoverable attorney fees; (3) he was entitled to discovery, including depositions of his former lawyers and the medical defendants’ lawyers to determine the effect of the ordinary negligence claim in the decision to settle and the amount of the settlement award; and (4) AWH should have advised him to consult independent counsel before he purportedly waived the NRS 7.095 cap via the contingency agreements.⁴ During these lien adjudication proceedings, we decided *Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d 825, which changed how Nevada courts distinguish professional from ordinary negligence claims; the district court, however, declined to apply its holding to this case. The district court later ruled against Castillo, awarding AWH the contingency fees and costs it sought. Castillo timely appealed.

DISCUSSION

Castillo disputes the amount he owes AWH on two main grounds. First, Castillo argues that the ordinary negligence claim sounds in professional negligence and that his attorney fees should therefore be

³AWH and Burk act in tandem henceforth, and we thus refer to Castillo’s former attorneys collectively as AWH.

⁴Shortly after the district court issued its final order, we held that NRS 7.095 is unwaivable. *Nevins v. Martyn*, 140 Nev., Adv. Op. 66, 557 P.3d 965, 977 (2024).

capped by NRS 7.095. Second, Castillo asserts that the lien was not perfected because he received proper notice thereof only *after* AWH received the settlement funds.⁵

AWH's attorney fees are capped by NRS 7.095

The parties first dispute whether NRS 7.095, which caps attorney fees in medical professional negligence cases, applies to Castillo's settlement. They contest whether the ordinary negligence claim is in fact a professional negligence claim and whether the district court erred in finding that NRS 7.095 did not apply to Castillo's settlement.⁶

⁵Castillo also contends that the second fee agreement with AWH is void because AWH breached its professional obligations in getting Castillo to sign the agreement. Several of these grounds were newly raised on appeal, and we therefore decline to consider them. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Others were not cogently argued and are also not considered. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). Most importantly, even if Castillo were right—a position we do not endorse—it would be immaterial, as AWH would still be entitled to receive reasonable attorney fees in quantum meruit, *Cooke v. Gove*, 61 Nev. 55, 58, 114 P.2d 87, 88 (1941), and to assert a lien on those fees, NRS 18.015(2).

⁶In addition to arguing that the relevant claim sounds in ordinary negligence, AWH also contends that the ordinary negligence claim places the entire settlement out of NRS 7.095's reach. We have not yet addressed the applicability of NRS 7.095—or NRS 41A.035—to mixed actions consisting of both professional and nonprofessional negligence claims. A cursory glance at other states reveals heterogeneous approaches. California, for instance, examines whether nonprofessional negligence claims are “qualitatively different” from professional negligence claims in determining whether its professional negligence caps apply. *Unruh-Haxton v. Regents of Univ. of Cal.*, 76 Cal. Rptr. 3d 146, 154 (Ct. App. 2008). If an action contains both professional negligence and qualitatively different claims, then California's medical professional negligence caps do not apply to the entire action. *Waters v. Bourhis*, 709 P.2d 469, 478 (Cal. 1985). Other

An attorney may move to assert lien rights, and the district court must then “adjudicate the rights of the attorney, client or other parties and enforce the lien.” NRS 18.015(6). The district court’s determination is a legal conclusion that we review de novo. *Leventhal v. Black & LoBello*, 129 Nev. 472, 476, 305 P.3d 907, 910 (2013).

NRS 7.095(1) caps contingent attorney fees in actions “based upon professional negligence.” The statute expressly applies to settlements as well. NRS 7.095(2). We look to the substance of a claim, not its form, to determine whether it sounds in professional negligence. *See, e.g., Yafchak v. S. L.V. Med. Invs., LLC*, 138 Nev. 729, 732, 519 P.3d 37, 40 (2022) (considering whether a claim sounded in professional negligence or elder abuse). When Castillo settled his claims, we applied a two-part test to determine whether a claim sounds in professional or ordinary negligence. *Estate of Curtis v. S. L.V. Med. Invs., LLC*, 136 Nev. 350, 356, 466 P.3d 1263, 1268 (2020). Under that test, courts examined “whether the claim pertains to an action that occurred within the course of a professional relationship,” as well as “whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience.” *Id.* (citation modified). We have since overruled *Estate of Curtis* on this point and now recognize that “[t]he sole inquiry [in determining whether a claim sounds in professional negligence] is whether the claim involves a provider of health

states, however, only apply the caps to the professional negligence claims. *See, e.g., Meeks v. Peng*, 545 P.3d 226, 238 (Utah 2024) (noting that, in a multi-claim action, only the damages awarded for a survival claim premised upon medical malpractice were capped). Given our conclusion that Castillo’s claims all sounded in professional negligence, we need not address this issue.

care rendering services in a way that causes injury,” *Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 831, abrogating the second part of the *Estate of Curtis* test.

Here, the district court found that NRS 7.095 did not apply to Castillo’s settlement. It initially ruled that “Castillo had ordinary negligence claims” without providing any further justification. After *Limprasert* was published, the district court further found that “Castillo made ordinary negligence claims in his last complaint,” and the court was “not aware of any legal mechanism that allow[ed]” it “to go back in time and effectively dismiss the claims he brought.” It appears that the court looked to the form of the claim instead of its substance.

We conclude that the district court erred in cursorily finding that the relevant claim sounded in ordinary negligence. To adjudicate the rights of each party, the district court needed to determine whether NRS 7.095 caps the amount Castillo owes AWH, which requires determining whether the relevant claim sounds in professional negligence. That demands examining the substance of the claim, *Yafchak*, 138 Nev. at 732, 519 P.3d at 40, and the district court should have employed the *Limprasert* test because “retroactivity is the default rule in civil cases,” *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014); *see also Renown Reg’l Med. Ctr. v. Second Jud. Dist. Ct.*, 141 Nev., Adv. Op. 64, 580 P.3d 756, 763 (2025) (applying *Limprasert* to a case that began when *Estate of Curtis* remained good law). The district court did neither, rendering its limited inquiry insufficient to adjudicate Castillo’s rights under NRS 7.095.⁷

⁷We note that during the civil proceedings against the medical defendants, the district court allowed Castillo to amend the complaint and

Applying *Limprasert* ourselves, we conclude that the relevant negligence claim sounded in professional negligence. The purportedly ordinary negligence claim alleged that hospital staff (1) failed to enter doctors' orders, (2) improperly transferred Castillo from an MRI suite to his room before talking to a radiologist, (3) failed to enter an order for an ankle X-ray twice over, (4) failed to call a physician after "learning of the critical MRI result," and (5) failed to keep Castillo "NPO" as a doctor ordered.⁸ Each of those actions "occurred within the course of a professional relationship" and thus alleged professional negligence. *See Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 830. We accordingly conclude that the district court erred in finding that NRS 7.095 does not apply. Because the relevant claim sounded in professional negligence, we conclude that Castillo owes AWH what NRS 7.095(1) provides.⁹

add the ordinary negligence claim but did not resolve whether the claim sounded in professional negligence, instead stating that it "believe[d] that it's going to largely turn on what the experts say." We decline to construe this as a finding that the claim sounded in ordinary negligence such that the second district court could rely on this finding.

⁸"NPO" is a medical term describing a period where a patient cannot eat or drink, generally in preparation for a medical examination. *NPO, or Nothing by Mouth: 3 Things You Need to Know*, UVA Radiology and Medical Imaging, InsideView, UVA Radiology Blog, <https://blog.radiology.virginia.edu/npo-definition> (last visited June 8, 2026).

⁹Castillo also argues that he should have been permitted discovery to contest the reasonableness of the costs incurred. Castillo has failed to show the district court abused its discretion in this regard. *See Sunrise Hosp. & Med. Ctr., LLC v. Eighth Jud. Dist. Ct.*, 140 Nev. 124, 126, 544 P.3d 241, 246 (2024) (reviewing discovery issue for abuse of discretion). First, the attorney fee agreements are contracts, operate according to their provisions, and require Castillo to pay all attorney expenses incurred. *See Davis v.*

AWH perfected only one of its attorney liens

While Castillo agreed to pay AWH the funds due under NRS 7.095, the record does not show whether payment in any amount was made, and we therefore address whether AWH perfected its attorney liens. Castillo argues that the district court erred in finding that AWH perfected its liens because AWH received the settlement checks before it properly noticed Castillo of the liens. AWH argues that it can perfect an attorney lien at any time before the client receives the funds.

As a statutory interpretation question, we review the district court's decision on this issue de novo. *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. 416, 420, 373 P.3d 103, 105 (2016). We begin with the plain text of the statute. *Leigh-Pink v. Rio Props., LLC*, 138 Nev. 530, 536, 512 P.3d 322, 327 (2022).

NRS 18.015 allows an attorney to attach a lien to a client's recovery. Because these liens are “creature[s] of statute, [an] attorney must meet all of the statutory requirements before the lien can be enforced.” *Golightly*, 132 Nev. at 419, 373 P.3d at 105. Relevant here, these liens must be perfected by serving notice to the client, which may be done by several enumerated means, including via certified mail. NRS 18.015(3). The lien attaches only to money “recovered” after the attorney has provided proper notice to the client. *Leventhal*, 129 Nev. at 478, 305 P.3d at 911; NRS

Beling, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) (recognizing that attorney fees may be provided for by contract and are subject to the principles of contractual interpretation in such instances). Second, the authorities Castillo relies on are distinguishable. And third, Castillo identifies no authorities providing an entitlement to relief. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

18.015(4)(a). Funds are deemed recovered upon delivery to counsel, and the lien does not attach to proceeds already received by the attorney. *Golightly*, 132 Nev. at 420, 373 P.3d at 105.

Here, the case settled on July 23. AWH received the first settlement check on September 7. AWH sent its first proper notice of an attorney lien on September 13. AWH then received the second settlement check on September 14 and sent a second notice of an attorney lien on September 29. The district court found that AWH perfected both of its liens because both notices were sent before Castillo received the settlement funds. The district court also justified its decision on equitable grounds, finding that “[e]quity and fundamental fairness dictate that” the attorney lien be valid.¹⁰

We conclude that the district court erred in finding that AWH perfected its lien against the first settlement check. AWH received the first settlement check before sending notice. Contrary to the district court’s finding, proper notice must be sent before counsel receives the funds for the lien against those funds to be perfected. *Golightly*, 132 Nev. at 420, 373 P.3d at 105. NRS 18.015 requires strict compliance, *see id.* at 419, 373 P.3d at 105 (concluding an “attorney must meet *all of the statutory requirements*”

¹⁰In making these findings, the district court relied on an unpublished disposition for the proposition that an attorney lien can be perfected after the attorney receives the funds but before the client receives them. *Advanced Pre-Settlement Funding LLC v. Gazda & Tadayon*, No. 74802, 2019 WL 1422713 (Nev. Mar. 28, 2019) (Order of Affirmance). In that unpublished disposition, consistent with *Golightly* and *Leventhal*, we held that funds are recovered when “[t]he prevailing party *or its counsel* . . . actually possesses” the money in question. *Id.* at *2 (emphasis added). Although the district court cited this passage, it reached the opposite conclusion.

to enforce a lien (emphasis added)), and the district court erred in finding that equitable considerations can negate these statutory requirements. We thus conclude that AWH failed to perfect its attorney lien on the first settlement check.¹¹ Conversely, AWH properly noticed Castillo before it received the second settlement check. AWH therefore perfected the lien against the funds recovered in the second settlement check. The district court thus did not err in its finding as to the attorney lien against the second payment.

CONCLUSION

NRS 7.095 caps contingent attorney fees in actions based upon professional negligence. To determine whether a claim sounds in professional negligence and is subject to the NRS 7.095 cap, we examine “whether the claim pertains to an action that occurred within the course of a professional [medical] relationship.” *Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 830. The district court here did not do so, instead relying on the title of the claim to conclude NRS 7.095 did not apply. This was error. Under *Limprasert*, the claim here sounded in professional negligence. NRS 7.095 thus limits AWH’s contingency fee. We also clarify that an attorney must perfect an attorney lien before the attorney receives the funds. As AWH did not perfect its attorney lien on the first check, it must use different means to recover outstanding funds on that check. The lien on the second check was properly noticed, and that lien was therefore perfected.

¹¹Should Castillo fail to distribute to AWH the full amount owed under NRS 7.095, AWH may turn to other means to recover the amount due.

Accordingly, we reverse the district court order and remand for further proceedings consistent with this opinion.

A handwritten signature in cursive script, appearing to read "Stiglich".

Stiglich, J.

We concur:

A handwritten signature in cursive script, appearing to read "Cadish".

Cadish, J.

A handwritten signature in cursive script, appearing to read "Lee".

Lee, J.