

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAECHEL SUTER BUTTON,  
Appellant,  
vs.  
WARREN W. GOEDERT; ERICA  
MICHAELS-HOLLANDER; AND  
BRUCE A. MATLEY,  
Respondents.

No. 41052

**FILED**

**FEB 16 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. B. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a legal malpractice action. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

When appellant Raechel Suter Button was a minor, her parents admitted her several times to the hospital for treatment of depression and substance abuse. Raechel's parents filed a Medical Legal Screening Panel (MLSP) complaint against the hospital for alleged ill treatment of Raechel while she was a patient. In addition, Raechel's parents, on Raechel's behalf, were named in a class action against the hospital.

A few months later, Raechel's parents retained respondents Warren W. Goedert, Erica Michaels-Hollander, and Bruce A. Matley (collectively, Goedert) as legal counsel. Goedert filed a new MLSP complaint and dismissed Raechel's parents from the class action. After the MLSP denied Raechel's complaint, Goedert filed suit on behalf of Raechel and her parents in district court, alleging several causes of action against the hospital and its parent companies.

The hospital defendants moved to dismiss, and the district court granted Raechel and her parents leave to amend their complaint.

The amended complaint added factual support to the existing causes of action, and it alleged new causes of action.

The hospital defendants moved for summary judgment. While the motion was pending, Raechel's parents substituted counsel. The district court granted summary judgment and dismissed all of Raechel's parents' claims and all but two of Raechel's claims. Raechel then settled her remaining claims with the hospital defendants.

After settlement, Raechel filed a complaint in the United States District Court for the District of Nevada alleging various acts of fraud and denial of due process in the processing of the claims against the hospital and doctor defendants, which the court dismissed. Raechel then filed the instant legal malpractice action against Goedert. The district court granted Goedert's motion for summary judgment.

On appeal, Raechel argues that Goedert failed to conduct adequate discovery, which led to a failure to plead her claims sufficiently in her medical malpractice suit against the hospital defendants. Specifically, she asserts that Goedert did not allege fraud with adequate specificity and that he failed to plead false imprisonment properly. She also claims that Goedert failed to plead concealment adequately, which led to statute of limitations problems with regard to her medical malpractice claim. Additionally, even though she settled her two remaining claims with the hospital defendants, Raechel contends that the settlement was to her detriment, and that Goedert caused her loss. Finally, Raechel claims that Goedert improperly dismissed her parents from the class action suit.

Summary judgment is appropriate when "the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment

as a matter of law.”<sup>1</sup> We review orders granting summary judgment de novo “without deference to the findings of the lower court.”<sup>2</sup> In order to maintain a claim for legal malpractice, the former client must prove that the attorney’s breach of a duty owed to the client was the proximate cause of the client’s damages.<sup>3</sup>

Goedert grounded his summary judgment motion in the argument that Raechel could not present an issue of material fact that Goedert was the proximate cause of loss to Raechel, and therefore, he was entitled to judgment as a matter of law. In granting summary judgment, the district court concluded that Raechel failed to provide admissible evidence demonstrating that Goedert’s alleged negligence proximately caused the dismissal of the underlying medical claims or settlement of claims for a reduced amount.

Although Raechel’s pleadings contain information regarding alleged concealment, fraud or other nefarious activity by the hospital/doctors in the underlying medical action, Raechel fails to demonstrate that such information would have been discoverable by Goedert at the time of Goedert’s representation and that such information would have altered the resolution of the underlying medical claims.

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<sup>1</sup>Wood v. Safeway, Inc., 121 Nev. \_\_\_, \_\_\_, 121 P.3d 1026, 1029 (2005) (citing NRCP 56(c)); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997).

<sup>2</sup>Id. (citing GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001) (citing Caughlin Homeowners Ass’n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310 311 (1993)).

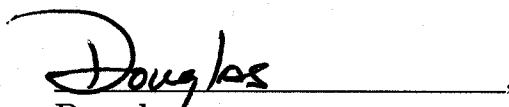
<sup>3</sup>Day v. Zubel, 112 Nev. 972, 976, 922 P.2d 536, 538 (1996).

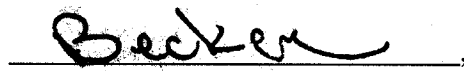
Specifically, Raechel's admissible evidence does not indicate the discovery that Goedert should have taken and what would have been obtained by such discovery that would have enabled Goedert to plead fraud, false imprisonment, or concealment so as to avoid the summary judgment rulings in the underlying medical action.

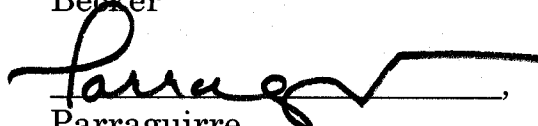
With regard to Raechel's settled claims, she failed to present evidence that Goedert caused her any loss.<sup>4</sup> Finally, with regard to Goedert's dismissal of Raechel's parents from the class action without their permission, Raechel did not assert how the dismissal caused her damages. The allegations in the class action were effectively the same as those pleaded by Goedert in Raechel's and her parents' individual claims, and Raechel did not indicate what happened in the class action that resulted in a loss to her.

Because Raechel did not present evidence below that raised an issue of material fact as to whether Goedert was the proximate cause of her injuries, we hold that Goedert is entitled to judgment as a matter of law.

We therefore ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Parraguirre

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<sup>4</sup>We note that Goedert did not represent Raechel in her settlement with the hospital defendants.

cc: Second Judicial District Court Dept. 7, District Judge  
Mirch & Mirch  
Laxalt & Nomura, Ltd./Reno  
Washoe District Court Clerk