

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDA S. SANDOVAL, ON BEHALF OF
HERSELF AND HECTOR F.
SANDOVAL, DECEASED,
Appellant,
vs.
DANKA MICHAELS, M.D.,
Respondent.

No. 41991

FILED

JUN 15 2005

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a summary judgment in a medical malpractice action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 26, 1998, appellant Linda S. Sandoval's husband, Hector F. Sandoval, died, purportedly of cirrhosis. Sandoval claims that in the summer of 2001 she began to suspect that malpractice had caused Hector's death.

Until October 1, 2002, NRS 41A.097(1) (amended 2002) read, "[A]n action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever comes first" Here, that four-year window would have closed on October 26, 2002. However, Sandoval submitted her claim to the Medical Dental Screening Panel on September 30, 2002, as was then required by NRS 41A.016(1) (repealed 2002). The

statute of limitations was tolled while the matter was pending before the screening panel.¹

During the summer of 2002, the Governor of Nevada called the Legislature into special session to address a perceived medical malpractice insurance crisis. The Legislature, among other actions, repealed provisions that required prescreening of cases by the medical screening panel.² Claimants who had filed a claim with the Medical Dental Screening Panel before October 1, 2002, and had not had a determination made by the panel, could elect to proceed with the screening panel process, or could elect out and file an action in the district court.³

Sandoval elected out via an opt-out form signed on October 29, 2002, sent on October 30, 2002, and received by the Division of Insurance on October 31, 2002. Subsequently, Sandoval filed her medical malpractice complaint on December 3, 2002. The district court granted respondent Dr. Danka Michaels summary judgment, having concluded that the tolling period ended on October 31, 2002, and the statute of limitations time period expired on November 26, 2002. Sandoval appeals.

Sandoval argues that the tolling period ended on November 7, 2002, when the screening panel sent formal notice to Dr. Michaels that Sandoval had opted out. Dr. Michaels argues that the district court correctly determined that the tolling period ended on October 31, 2002.

¹See NRS 41A.097(2)(b) (amended 2002); see also Fernandez v. Kozar, 107 Nev. 446, 449, 814 P.2d 68, 70 (1991).

²2002 Nev. Stat. Spec. Sess., ch. 3, § 69, at 25 (repealing NRS 41A.016).

³2002 Nev. Stat. Spec. Sess., ch. 3, § 72(1), at 25.

“Summary judgment is proper when a cause of action is barred by the statute of limitations.”⁴ An appeal from an order granting summary judgment is reviewed de novo.⁵ When reviewing a district court’s order granting summary judgment, this court will determine whether the district court perceived and applied the law correctly.⁶

The special session legislation abolishing the medical screening panel provided that for claimants opting out of the screening panel process, tolling would end on December 1, 2002.⁷

Here, Sandoval filed her claim before the screening panel on September 30, 2002, and the tolling period ceased on December 1, 2002, per the special session legislation. Thus, Sandoval’s case was tolled for sixty-one days. If the sixty-one-day tolling period is added to October 26, 2002, then December 27, 2002, becomes the last day on which Sandoval could have validly filed her complaint with the district court. Sandoval filed on December 3, 2002, well within the statute of limitations time period. Therefore, we conclude that the district court erred in granting

⁴Clark v. Robison, 113 Nev. 949, 950-51, 944 P.2d 788, 789 (1997).


⁵See Allyn v. McDonald, 112 Nev. 68, 71, 910 P.2d 263, 265 (1996); Walker v. American Bankers Ins., 108 Nev. 533, 536, 836 P.2d 59, 61 (1992).


⁶Lee v. GNLV Corp., 117 Nev. 291, 295, 22 P.3d 209, 211 (2001).


⁷2002 Nev. Stat. Spec. Sess., ch. 3, § 72(2)(b), at 25. We note that this portion of the 2002 special session legislation was not incorporated into the Nevada Revised Statutes because it served as a temporary transition scheme implemented as part of the medical screening panel’s abolishment. See Hearing on A.B. 1 Before Senate Comm. of the Whole, 18th Spec. Leg. (Nev., July 30, 2002).

summary judgment to Dr. Michaels on the basis that Sandoval had violated the statute of limitations.⁸ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Kimball Serota LLP
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas
Clark County Clerk

⁸Because of our conclusion, we do not address the other issues raised by the parties in their briefs.