

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILLIAN A. THORP AND TANIA A.  
CRENSHAW,  
Appellants,  
vs.  
MARCEL LEGRANGE,  
Respondent.

No. 42588

**FILED**

DEC 11 2006

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

ORDER AFFIRMING IN PART AND REVERSING IN PART

This is an appeal from a district court summary judgment in a civil sexual abuse action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court.<sup>1</sup> The standard of review for an order granting a motion to strike is abuse of discretion.<sup>2</sup>

Following NRS 11.020, all parties to this appeal concur that the California statute of limitations applies in this case because the alleged abuse that was litigated upon took place exclusively in California.<sup>3</sup>

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<sup>1</sup>Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing Caughlin Homeowner's Ass'n v. Caughlin Club, 109 Nev. 264, 266, 849 P.2d 310, 311 (1993)).

<sup>2</sup>See Casino Properties, Inc. v. Andrews, 112 Nev. 132, 135-36, 911 P.2d 1181, 1183 (1996).

<sup>3</sup>NRS 11.020 states:

*continued on next page . . .*

However, the parties do not agree as to the issue on appeal before this court.

Appellants Gillian A. Thorp and Tania A. Crenshaw (the sisters) frame their argument as whether California's code of civil procedure governs litigation in Nevada courts. Thus, the sisters contend that while the district court properly applied the California statute of limitations, it improperly imposed a procedural portion of the California code in requiring the filing of certificates of merit called for in Cal. Civ. Proc. Code § 340.1(g) (2003), which the sisters argue are not required in Nevada.<sup>4</sup>

Respondent Marcel LeGrange contends that the proper issue on appeal is whether the district court correctly applied the California statute of limitations pursuant to section 340.1. Accordingly, LeGrange

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*... continued*

When a cause of action has arisen in another state, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this State, except in favor of a citizen thereof who has held the cause of action from the time it accrued.

Further, the court does not address the actionability or preclusion of any cause of action that could be brought in South Africa for the alleged abuse that took place in South Africa because the parties did not argue that issue on appeal.

<sup>4</sup>Section 340.1(g) requires the filing of certificates of merit in cases alleging childhood sexual abuse when the plaintiff is more than twenty-six years old. As prescribed in section 340.1(g) and (h), both a mental health practitioner and an attorney must execute sworn statements attesting to a reasonable basis to believe the plaintiff's allegations.

argues that regardless of whether the certificates of merit requirement was met in this case, the statute of limitations expired in 1998 and, that the sisters' claims were time-barred because the complaint was not filed until 2000. LeGrange contends that the facts in this case show that the sisters were aware of the alleged abuse a long time ago and that the sisters' actual knowledge of the alleged abuse precluded application of the delayed discovery rule in section 340.1(a).<sup>5</sup>

We conclude that the district court was correct as to the sisters' case against LeGrange, but for the wrong reasons. The district court dismissed the sisters' case by striking the sisters' pleadings in this case and by granting summary judgment for LeGrange. However, the procedural steps taken by the district court were improper. The district court could not strike the sisters' pleadings in this case and then concurrently grant summary judgment to LeGrange.

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<sup>5</sup>Section 340.1(a) reads:

In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered the psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later[.]

We conclude that the district court's decision as to summary judgment was proper in this case because the sisters did not file the requisite certificates of merit in accordance with section 340.1(g) and (l).<sup>6</sup>

The requirement for certificates of merit is contained within section 340.1, which governs the statute of limitations in this case, and we believe that the California Legislature intended the requirement for certificates of merit to be a part of the complaint itself.<sup>7</sup> We conclude that this requirement for certificates of merit must be followed in this case pursuant to NRS 11.020. Consequently, the sisters were required to file certificates of merit in order to sustain their claims against LeGrange.

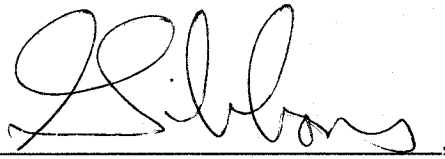
Therefore, we conclude that the district court did abuse its discretion in granting LeGrange's motion to strike the sisters' pleadings. However, the district court was correct in granting summary judgment to LeGrange, as a matter of law. Accordingly, we

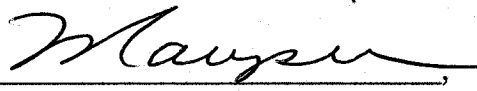
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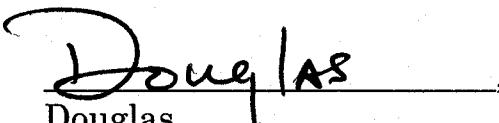
<sup>6</sup>Section 340.1(l) provides that "[t]he failure to file certificates in accordance with this section shall be grounds for a demurrer . . . or a motion to strike."

<sup>7</sup>See Doyle v. Fenster, 47 Cal. Rptr. 2d 327, 330 (Ct. App. 1996) (holding that "[t]he fact that the Legislature designated the demurrer and motion to strike as means to challenge plaintiff's failure to file certificates, as required by section 340.1, indicates that the Legislature views the certificates as an aspect of the complaint"); cf. McVeigh v. Does 1 Through 3, 42 Cal. Rptr. 3d. 91, 93 (Ct. App. 2006) (holding that certificates of merit can be filed after the statute of limitations has run if the attorney's certificate shows necessity, but not more than sixty days after the complaint is filed).

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

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

cc: Hon. Connie J. Steinheimer, District Judge  
Law Offices of James J. Lee  
Walsh, Baker & Rosevear, P.C.  
Washoe District Court Clerk