IN THE SUPREME COURT OF THE STATE OF NEVADA

MATHEW CARR, M.D., AND JAMES S. TATE, M.D.,
Appellants,
vs.
ESTATE OF ROXANNE MALICKI, AND TYLER YARBRO, A MINOR, THROUGH HIS GUARDIAN, DONALD D. YARBRO,
Respondents.

No. 42665

FILED

MAR 22 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order denying attorney fees and costs. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge. We conclude that appellants, Drs. Mathew Carr and James S. Tate, were entitled to costs and attorney fees under former NRS 41A.056.

When respondents, the Estate of Roxanne Malicki and Tyler Yarbro, a minor, through his guardian, Donald D. Yarbro, initiated the medical malpractice claim against Drs. Carr, Tate, and two other defendants, all medical malpractice actions were subject to statutory pre-screening by medical-legal screening panels.[1] The then-existing NRS 41A.056(2), which was repealed in 2002, stated:

> If the [panel] determination is not in favor of the claimant, the claimant may file an action in court. If the claimant does not obtain a judgment in his favor in court, the defendant must be

[1]See NRS 41A.016(1) (repealed 2002).

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> awarded reasonable costs and attorney's fees incurred after the date of filing the action in court.

After the panel found there was no reasonable probability of medical malpractice by the appellants or the settling defendants, the Estate then filed a complaint in district court. Eventually, the two other defendants and the Estate entered into a settlement agreement, which provided that (1) the Estate would release any claims arising from the alleged medical malpractice and (2) each party would bear its own costs and attorney fees. Based on the language of the settlement agreement, Drs. Carr and Tate filed motions to dismiss, which the district court granted. However, the district court denied their motions for attorney fees and costs pursuant to NRS 41A.056(2), reasoning that they were third-party beneficiaries of the settlement agreement and therefore could not claim attorney fees. We reverse.

DISCUSSION

Third-party beneficiaries

On appeal, Drs. Carr and Tate argue that the district court erred in concluding that they were not entitled to costs and fees because they were third-party beneficiaries to the malpractice settlement agreement. We agree that the district court erred in this regard. First, the release agreement in this case, while exonerating Drs. Carr and Tate, had the effect of "perfecting" claims of contribution and implied indemnity against them.[2] Thus, while Drs. Carr and Tate benefited from the

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[2]Doctors Company v. Vincent, 120 Nev. 644, 657-58, 98 P.3d 681, 690 (2004) (holding in part that "[a] tortfeasor seeking to perfect a contribution claim through a prejudgment settlement process must pay an amount in excess of his equitable share of liability and must explicitly

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settlement agreement to a degree, they were not third-party beneficiaries of the settlement as the district court applied that term. Second, Drs. Carr and Tate, were not actual parties to the settlement and, upon obtaining the order dismissing them from the suit, became prevailing parties in the action.

Repeal of NRS 41A.056

During the pendency of the Estate's claim in this matter, the Legislature repealed the provisions requiring pre-screening of cases by the panel and awarding attorney fees under NRS 41A.056(2). The Estate argues that because the Legislature repealed NRS 41A.056 before the district court dismissed the Estate's claim, Drs. Carr and Tate may not rely on NRS 41A.056 as a basis for demanding attorney fees. We disagree. Because the parties elected to proceed through the medical-legal screening panel, NRS 41A.056 still applies.[3]

Favorable judgment

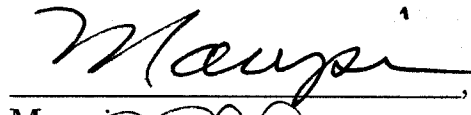
The Estate additionally argues that dismissal does not constitute a judgment in favor of the appellants within the meaning of NRS 41A.056(2), which requires payment of fees and costs to a medical malpractice defendant when the decision of the medical-legal screening panel and the court's judgment do not favor the plaintiff. Here, the screening panel found "No reasonable probability of medical malpractice,"

. . . *continued*
extinguish the liability of the joint tortfeasor from whom contribution is sought as part of the settlement." (footnote omitted)).

[3]Borger v. Dist. Ct., 120 Nev. 1021, 1024, 102 P.3d 600, 602 (2004); 2002 Nev. Stat., ch. 3, § 72, at 25.

and the district court granted Drs. Carr and Tate's motions to dismiss. Because Drs. Carr and Tate have satisfied NRS 41A.056(2), the district court erred in refusing to grant attorney fees and costs. Accordingly, we

ORDER the judgment of the district court REVERSED.



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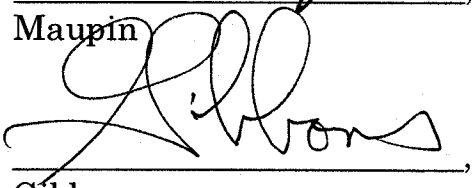

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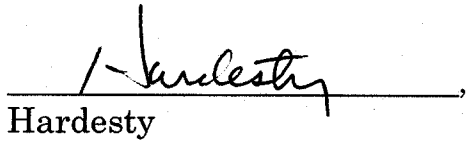

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cc: Hon. Jessie Elizabeth Walsh, District Judge
John H. Cotton & Associates, Ltd.
Charles J. Lybarger
Clark County Clerk