

SUPREME COURT OF NEVADA

Yafchak v. South Las Vegas Medical Investors, LLC

Yafchak v. S. Las Vegas Med. Inv'rs, 2022 NV 70 (2022) · No. 82746 · Decided October 27, 2022

SUMMARY

The Nevada Supreme Court reversed the dismissal of a negligence, elder abuse, and wrongful death action against a skilled nursing facility. The court held that professional negligence claims under NRS Chapter 41A and elder abuse claims under NRS 41.1395 are separate and distinct, and that the record did not establish at the pleading stage that the claims sounded in professional negligence requiring an affidavit of merit. The court remanded for further factual development.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Michael L. Parraguirre, Chief Justice; James W. Hardesty, Justice; Linda M. Bell, Justice; Abbi Silver, Justice; Lidia S. Stiglich, Justice; Elissa F. Cadish, Justice; Patricia Lee Pickering, Justice; Ron D. Herndon, Justice
JURISDICTION	Nevada
DECIDED	October 27, 2022
DOCKET	82746
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the Eighth Judicial District Court granting the defendant skilled-nursing-facility's motion to dismiss a negligence action for failure to attach an affidavit of merit and on an alternative statute-of-limitations ground.
STANDARD OF REVIEW	De novo review of dismissal for failure to comply with NRS 41A.071; dismissal is proper only when it appears beyond a doubt that the plaintiff could prove no set of facts entitling her to relief.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lynn Yafchak, statutory heir and special administrator to the Estate of Joan Yafchak, deceased v. South Las Vegas Medical Investors, LLC, doing business as Life Care Center of South Las Vegas

TOPICS

professional negligence

nursing home liability

motions to dismiss

pleadings

appellate procedure

PRACTICE AREAS

professional negligence

elder abuse

nursing home liability

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the allegations in the complaint necessarily sounded in professional negligence under NRS Chapter 41A and therefore required an affidavit of merit under NRS 41A.071.
2. Whether the district court properly dismissed the complaint before discovery when the face of the complaint did not establish whether the alleged conduct constituted professional negligence or elder abuse.
3. Whether dismissal on the alternative statute-of-limitations ground under NRS 41A.097(2) was proper when it was unclear whether NRS Chapter 41A applied.

HOLDINGS

1. Claims under Nevada's professional-negligence statutes, NRS Chapter 41A, and Nevada's elder-abuse statute, NRS 41.1395, are separate and distinct causes of action.
2. The complaint could not be classified as professional negligence at the pleading stage because the allegations did not establish that the alleged tortious conduct was a medical decision undertaken by a provider of health care.
3. When a defendant moves to dismiss for failure to comply with NRS 41A.071, the defendant bears the burden of demonstrating that the plaintiff's allegations arise under NRS Chapter 41A.

KEY QUOTATIONS

“Claims under these statutes are separate and distinct, and it is important that the claims are properly classified because only claims for professional negligence require plaintiff's to include an affidavit of merit as part of their complaint.” (at 2)

“Namely, when a defendant moves to dismiss a plaintiff's complaint for failing to comply with NRS 41A.071, the burden is on the defendant to demonstrate that plaintiff's allegations arise under NRS Chapter 41A.” (at 5)

“Based on the allegations in Yafchak's complaint, and drawing all inferences in her favor, it cannot be determined at this juncture that the gravamen of her allegations sound in professional negligence as opposed to elder abuse.” (at 6)

FACTUAL BACKGROUND

Joan Yafchak was a resident of Life Care Center of South Las Vegas and allegedly suffered injuries, including after a fall, that resulted in her death. Her estate representative alleged that the facility failed to properly assess Joan after the fall and failed to monitor and care for her. The complaint also alleged negligent hiring, training,

and supervision but did not identify the employees responsible or establish whether the alleged conduct was undertaken by a statutory provider of health care.

PROCEDURAL HISTORY

Lynn Yafchak sued South Las Vegas Medical Investors, LLC, alleging elder abuse, negligence, and wrongful death arising from injuries her mother suffered while residing at the facility. She did not attach an affidavit of merit and did not identify which employees allegedly provided improper care. The district court concluded that the claims sounded in professional negligence under NRS Chapter 41A and dismissed the complaint. The Nevada Supreme Court reversed and remanded, holding that the complaint alone did not establish that the claims sounded in professional negligence rather than elder abuse.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including factual development sufficient to determine whether the gravamen of the claims sounds in professional negligence under NRS Chapter 41A or elder abuse under NRS 41.1395.

CASES CITED

- Estate of Curtis v. South Las Vegas Medical Investors, LLC, 136 Nev. 350, 466 P.3d 1263 (2020)
- Washoe Medical Center v. Second Judicial District Court, 122 Nev. 1298, 148 P.3d 790 (2006)
- Zohar v. Zbiegien, 130 Nev. 733, 334 P.3d 402 (2014)
- Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008)
- Western States Construction, Inc. v. Michoff, 108 Nev. 931, 840 P.2d 1220 (1992)

OPINION

PER CURIAM.

138 Nev., Advance Opinion 10 IN THE SUPREME COURT OF THE STATE OF NEVADA
LYNN YAFCHAK, STATUTORY HEIR No. 82746 AND SPECIAL ADMINISTRATOR TO THE
ESTATE OF JOAN YAFCHAK, DECEASED, Appellant, ti:7,, • 4, VS. n SOUTH LAS VEGAS
MEDICAL INVESTORS, LLC, D/B/A LIFE CARE CENTER OF SOUTH LAS VEGAS, -I A.
BROWN ERK 1PR ECO ERRONEOUSLY NAMED AS LIFE • C' 176' ZiFP:ITY-CLE14;<-2"
CARE CENTERS OF AMERICA, A FOREIGN CORPORATION, Respondent.

Appeal from a district court order granting a motion to dismiss in a negligence action involving a skilled nursing home. Eighth Judicial District Court, Clark County; Crystal Eller, Judge. Reversed and remanded. Cogburn Law and Jamie S. Cogburn and Joseph J. Troiano, Henderson, for Appellant. Lewis Roca Rothgerber Christie LLP and Abraham G. Smith, Daniel F. Polsenberg,

Joel D. Henriod, and Kory J. Koerperich, Las Vegas; Hall Prangle & Schoonveld, LLC, and Casey W. Tyler and Zachary J. Thompson, Las Vegas, for Respondent.

Claggett & Sykes Law Firm and Micah S. Echols and David P. Snyder, Las Vegas; Law Office of Matthew L. Sharp and Matthew L. Sharp, Reno, for Amicus Curiae Nevada Justice Association. - 3.3111'3 BEFORE THE SUPREME COURT, EN BANC. OPINION By the Court, PARRAGUIRRE, C.J.: In this opinion we both clarify the relationship between Nevada's professional negligence statutes, NRS Chapter 41A, and Nevada's elder abuse statute, NRS 41.1395, and also discuss their application to claims against skilled nursing home facilities.

Claims under these statutes are separate and distinct, and it is important that the claims are properly classified because only claims for professional negligence require plaintiff's to include an affidavit of merit as part of their complaint.

In the underlying proceeding, the district court concluded that appellant's allegations sounded in professional negligence and dismissed her complaint for failure to attach an affidavit of merit. For the reasons stated below, we conclude that factual development as to the gravamen of the plaintiff's allegations is necessary before such a determination can be reached.

Thus, we reverse the district court's dismissal order and remand for further proceedings consistent with this decision. FACTS AND PROCEDURAL HISTORY Appellant Lynn Yafchak filed a complaint against respondent skilled nursing home Life Care Center of South Las Vegas (LCC) and ten unnamed defendants for injuries that her mother, decedent Joan Yafchak (Joan), suffered while a resident at LCC.

In her complaint, Yafchak asserted elder abuse, negligence, and wrongful death claims. Yafchak did not attach an affidavit of merit to her complaint. Nor did Yafchak specify which negligent actions were allegedly committed by LCC's employees or which employees were responsible for the alleged improper care. Further, SUPREME COURT OF NEVADA 2 (01 1.147A LCC did not proffer any evidence that clarified either of these two issues.

Instead, Yafchak's complaint only generally averred that the negligent conduct of LCC's employees was the cause of Joan's death and that their negligence stemmed from LCC's own negligent hiring, training, and supervision of said employees. LCC moved to dismiss Yafchak's complaint, arguing that although her complaint did not expressly plead claims of professional negligence, Yafchak's allegations sounded in professional negligence and thus required her to attach a:n affidavit of merit.

The district court, relying on our decision in *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. 350, 466 P.3d 1263 (2020), agreed that Yafchak's claims arose from allegations of professional negligence, therefore requiring her complaint to be accompanied by an affidavit of merit.

Because Yafchak's complaint did not include the required affidavit, the district court granted LCC's motion to dismiss.' DISCUSSION In Nevada, actions for professional negligence are governed by NRS Chapter 41A. NRS Chapter 41A applies solely to claims regarding medical negligence committed by a "provider of health care." NRS 41A.015. A "provider of health care" is statutorily defined in NRS 41A.017.

Where a complaint includes allegations of professional negligence, the plaintiff must include an affidavit of merit with their complaint. NRS 41A.071. If a complaint averring professional negligence is filed without an affidavit of 'The district court also dismissed Yafchak's complaint as time-barred under NRS 41A.097(2).

However, as we will explain, it is not clear that NRS Chapter 41A applies to Yafchak's complaint. Thus, we reverse the district court's decision to dismiss her complaint on this alternative ground. SUPREME COURT OF NEVADA 3 19.47A merit, the complaint is void ab initio and dismissed. Washoe Med. Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006).

Nevada has also provided a statutory cause of action for elder abuse, NRS 41.1395, wherein an action may be brought on behalf of an elder or vulnerable person for an injury that they suffered because of abuse, neglect, or exploitation. NRS 41.1395 is an important statute for protecting Nevada's elderly and vulnerable population and incentivizes attorneys to represent this type of client by permitting plaintiffs to recover enhanced damages and, where appropriate, attorney fees and costs.

See NRS 41.1395(1)-(2). Claims under NRS Chapter 41A and NRS 41.1395 are separate and distinct. This is crucial because only claims arising under NRS Chapter 41A require the plaintiff to attach an affidavit of merit. Compare NRS 41A.071, with NRS 41.1395.

In *Curtis*, we recognized that although a complaint may not expressly include a claim for professional negligence, a plaintiff may nevertheless be required to comply with the affidavit of merit requirement if the underlying allegations sound in professional negligence. 136 Nev. at 353-54, 466 P.3d at 1266-67.

For example, where a complaint asserts direct liability against an employer for negligent hiring, training, and supervision, the complaint against the employer may be subject to the affidavit requirement if the underlying tortfeasor employee's negligence constitutes professional negligence. *Id.* As we emphasized, courts must focus on the gravamen or substance of each claim rather than its form.

Id. at 353, 466 P.3d at 1266. 4 While professional negligence and elder abuse claims are legally discrete, we also acknowledge that the facts supporting these two types of claims are often closely related or overlapping. This may make determining which statute the claim properly arises under difficult. It may be particularly unclear as to allegations concerning an elderly person's

mistreatment at a skilled nursing facility because these facilities often provide both standard and medical care for their residents and are staffed by both persons who do and persons who do not meet NRS 41A.017's definition of a provider of health care.

Thus, in determining whether the gravamen of a claim sounds in professional negligence or elder abuse, courts must give particular consideration to the underlying facts and how they are alleged in the complaint. Here, relying on *Curtis*, the district court concluded from the totality of the allegations in the complaint that Yafchak's claims against LCC sounded in professional negligence.

We review the district court's decision to dismiss Yafchak's complaint for failing to comply with NRS 41A.071 de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014). We will affirm such a ruling only where it appears beyond a doubt that the plaintiff could prove no set of facts that would entitle her to relief. *Id.* at 736, 334 P.3d at 405.

Namely, when a defendant moves to dismiss a plaintiff's complaint for failing to comply with NRS 41A.071, the burden is on the defendant to demonstrate that plaintiff's allegations arise under NRS Chapter 41A. And, when reviewing a motion to dismiss, "this court will recognize all factual allegations in [the plaintiff's] complaint as true and draw all inferences in its favor."

Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). SUPREME COURT OF NEVADA PLOA Based on the allegations in Yafchak's complaint, and drawing all inferences in her favor, it cannot be determined at this juncture that the gravamen of her allegations sound in professional negligence as opposed to elder abuse. While it appears that Yafchak's allegations primarily concern two related instances—(1) LCC's failure to properly assess Joan after she fell and (2) LCC's failure to monitor and care for Joan—there is critical information missing that is necessary to determine whether Yafchak's complaint avers professional negligence as opposed to elder abuse.

For example, as noted above, NRS Chapter 41A only applies to professional negligence committed by a "provider of health care." Here, based on the allegations in the complaint, it is unclear whether the alleged tortious conduct was a medical decision undertaken by a "provider of health care." Unlike in *Curtis*, where it was specifically asserted that the underlying negligence was committed by a nurse (a person included within NRS 41A.017's definition of a provider of health care), Yafchak's complaint does not identify who on LCC's staff allegedly injured Joan.

For example, a nursing home facility may be vicariously liable for the professional negligence of a nursing home employee who is a provider of health care, in which case the nursing home would be subject to NRS Chapter 41A. LCC, as the moving party, had the burden of demonstrating Yafchak's allegations arose from professional negligence committed by a provider of health care.

Because Yafchak's complaint was dismissed prior to any discovery, we are confined solely to reviewing Yafchak's complaint, and looking at the face of the complaint, it cannot be said that

there is no set of facts that place Yafchak's allegations beyond the realm of professional negligence and 6 within the scope of elder abuse.² Thus, we conclude that LCC failed to meet its burden.

CONCLUSION Allegations of professional negligence and elder abuse are separate and distinct, with only the former requiring the plaintiff to file an affidavit of merit when alleged as part of a negligent hiring, training, and supervision claim. Based on the face of Yafchak's complaint, it is unclear whether the gravamen of her claims against LCC sound in professional negligence as opposed to elder abuse.

Further factual development is necessary before such a determination can be reached. Thus, the district court erred in summarily concluding that LCC met its burden in proving that Yafchak's allegations sounded in professional negligence and subsequently dismissing her complaint for failure to attach an affidavit of merit.

Accordingly, we reverse the district court's order dismissing 2LCC expresses concern that permitting Yafchak's complaint to proceed only encourages plaintiffs to file obscure complaints and plead their allegations vaguely to escape summary dismissal.

We disagree. First, with respect to Yafchak's complaint, she maintained at oral argument that she was unable to plead her allegations with more specificity because she lacked information from LCC regarding who provided the allegedly negligent care for her mother.

Second, and more generally, for a complaint to be proper, it "need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so th.at the defending party has adequate notice of the nature of the claim and relief sought." *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). Where a defendant believes a complaint to be improperly obscure or otherwise vague, a defendant has alternative avenues by whi.ch to seek relief, including filing a motion for a more definite statement.

See NRCP 12(e). SUPREME COURT OF NEVADA 7 If 1) 1.147A Yafchak's complaint and remand this matter for further proceedings consistent with this opinion.³, CAT- Parraguirre We concur: Hardesty J. Stiglich Cadish, J. Pickering Herndon 3The Honorable Abbi Silver having retired, this matter was decided by a six-justice court. SUPREME COURT OF NEVADA 8 fin 194.7.A