

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERESA RENITA BURWELL,
Appellant,
vs.
NEVADA ORTHOPEDIC AND SPINE
CENTER LLP; AND ARTHUR TAYLOR,
M.D.,
Respondents.

No. 76958-COA

FILED

OCT 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

Teresa Renita Burwell appeals from a district court order dismissing a complaint in a tort action. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Burwell filed the underlying action against respondents Nevada Orthopedic and Spine Center LLP and Arthur Taylor, M.D., alleging professional negligence and defamation stemming from treatment she received in connection with a workers' compensation claim. In relevant part, Burwell's complaint set forth various reasons why she believes her treatment with respondents fell below the standard of care. Burwell also alleged that Dr. Taylor falsified a medical evaluation and otherwise made false statements about Burwell's conduct during the course of treatment that ultimately caused her to be terminated from her employment. Respondents moved to dismiss Burwell's complaint on grounds that she failed to file it with an affidavit from a medical expert supporting the allegations therein, and also that she failed to file the action within the statute of limitations period applicable to professional negligence claims.

The district court agreed and dismissed the complaint in its entirety. This appeal followed.

Burwell does not argue on appeal that the district court erred in concluding that her claim for professional negligence was time-barred under the one-year statute of limitations provided in NRS 41A.097(2). *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Moreover, her argument that she was not required to file her complaint with an affidavit from a medical expert in order to maintain her professional negligence claim is without merit. *See* NRS 41A.071 (providing that the district court shall dismiss an action for professional negligence if it was filed without the requisite affidavit from a medical expert); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (holding that “a medical malpractice complaint filed without a supporting medical expert affidavit is void ab initio”).

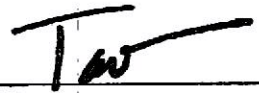
However, we agree with Burwell that the district court erred in construing her entire complaint as sounding in professional negligence and thereby dismissing the defamation claim on the same grounds it dismissed the negligence claim. Respondents did not present any grounds to the district court for dismissing the defamation claim aside from arguing summarily that it too was subject to Nevada’s medical malpractice laws. However, defamation is a distinct tort with its own statute of limitations. *See* NRS 11.190(4)(c); *Franchise Tax Bd. of Cal. v. Hyatt*, 130 Nev. 662, 685-86, 335 P.3d 125, 141 (2014) (recognizing defamation as a distinct tort), *vacated on other grounds*, 136 S. Ct. 1277 (2016). Because respondents did not present any argument as to when Burwell’s defamation claim accrued and whether it was time-barred by the relevant statute of limitations, the

district court did not analyze that issue, and thus it erred in dismissing the entirety of Burwell's complaint.

Accordingly, we affirm the district court's order insofar as it dismissed Burwell's professional negligence claim, but we reverse the remainder of the order and remand for proceedings consistent with this order.¹

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹We reject Burwell's argument that the original district judge to which this case was assigned failed to timely recuse himself and "caus[ed] a delay of justice." Burwell did not present this argument to the district court, and she nevertheless fails to show how she was in any way prejudiced by the alleged delay. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (noting that points not urged in the trial court are deemed waived); *see also* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

²Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

cc: Hon. Adriana Escobar, District Judge
Teresa Renita Burwell
Carroll, Kelly, Trotter, Franzen, McBride & Peabody/Las Vegas
Eighth District Court Clerk