

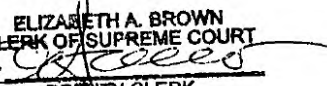
IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A
DESERT SPRINGS HOSPITAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE GLORIA
STURMAN, DISTRICT JUDGE,
Respondents,
and
LASHAWANDA WATTS;
HOLAVANAHALLI KESHAVA-PRASAD,
M.D.; H. KESHAVA PRASAD, M.D.,
PLLC; ABDUL TARIQ, D.O.;
NEUROLOGY CLINICS OF NEVADA
LLC; AMIR QURESHI, M.D.; ROE AMIR
QURESHI, M.D., EMPLOYER; ALI HAQ,
M.D.; ROE ALI HAQ, M.D., EMPLOYER;
CHARLES KIM DANISH; AND
PLATINUM HOSPITALISTS, LLP,
Real Parties in Interest.

No. 85096

FILED

APR 05 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus and/or prohibition challenges a district court order denying a motion for partial dismissal in a medical malpractice action. Real party in interest Lashawanda Watts was admitted to petitioner Valley Health Systems, LLC d/b/a Desert Springs Hospital (Desert Springs) to receive medical care for discoloration and discomfort of both feet. During the following week, various providers treated Watts, and she was tentatively diagnosed as having “probable vasculitis.” After being treated with steroids and other pharmaceutical therapies, Watts was discharged to a rehabilitation center. She was later transferred to University Medical Center and Dixie Regional Medical

Center where she was diagnosed with vasculitis and continued receiving treatment. Despite the treatments, Watts ultimately lost several of her toes.

Watts subsequently filed a complaint asserting professional negligence claims against Desert Springs and several individual physicians and their corporations. Before answering the complaint, Desert Springs moved to dismiss Count One-*Hospital Negligence* claim against it asserting the allegations within the body of Count One were identical to allegations pleaded within Count Seven's-*Vicarious Liability* claim. The district court denied Desert Spring's motion for dismissal of Count One. Desert Springs now seeks a writ of mandamus directing the district court to dismiss Count One of the complaint.¹ While we generally decline to consider writ petitions challenging denials of motions to dismiss, we entertain the writ petition here because, as explained further below, there are no factual disputes, the legal issue is dispositive, and the district court was obligated to dismiss the relevant claim under NRS 41A.071.² See *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197-98, 179 P.3d 556, 558-59 (2008) (addressing circumstances under which we will entertain petitions challenging denials of motions to dismiss).

¹Because we ultimately conclude that Desert Springs is entitled to a writ of mandamus, we do not address its alternative request for a writ of prohibition.

²We decline to apply the doctrine of laches because it does not appear that Desert Spring's six-month delay in filing the petition prejudiced Watts or resulted from inexcusable delay or acquiescence. See *Buckholt v. Second Judicial Dist. Court*, 94 Nev. 631, 633, 584 P.2d 672, 673-74 (1978) (outlining the relevant factors for determining whether to apply laches), *overruled on other grounds by Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 88 P.3d 840 (2004); see also *Widdis v. Second Judicial Dist. Court*, 114 Nev. 1224, 1227-28, 968 P.2d 1165, 1167 (1998) (recognizing that "there is no specific time limit delineating when a [writ petition] must be filed").

Desert Springs argues that dismissal of Count One's claim of Hospital Negligence is warranted under NRS 41A.071. We review de novo, *see Marquis & Aurbach v. Eighth Judicial Dist. Court*, 122 Nev. 1147, 1156, 146 P.3d 1130, 1136 (2006) (holding that we review "a district court's interpretation of a statute or court rule . . . de novo, even in the context of a writ petition"), and agree. NRS 41A.071(4) requires the district court to dismiss a professional negligence action where the affidavit fails to "[s]et[] forth factually a specific act or acts of alleged negligence separately as to each defendant in simple, concise and direct terms." When determining whether the expert affidavit meets the requirements of NRS 41A.071, "courts should read the complaint and the plaintiff's NRS 41A.071 expert affidavit together." *Zohar v. Zbiegien*, 130 Nev. 733, 739, 334 P.3d 402, 406 (2014). For the reasons stated below, we conclude that Watts' complaint and attached affidavits do not satisfy NRS 41A.071(4) as to the claim entitled Count One-Hospital Negligence against Desert Springs such that the statute required the district court to dismiss that claim.

Count One does not allege that Desert Springs, itself, was negligent, and instead alleges that it is vicariously liable for the actions of its physicians while focusing entirely on their alleged negligent acts. For example, Count One alleges that one provider "discharged [Watts] to [a rehabilitation hospital]"; that "[t]he providers at Desert Springs fell below the standard of care for [Watts] by not seeking expertise from rheumatology or transferring the patient to a higher level of care at a tertiary care center as soon as the diagnosis of vasculitis was being considered"; and that "the providers should have transferred [Watts] to a tertiary care center so as to prevent progressive damage to imperiled tissues."

Similarly, Watts' first medical expert, a physician, averred that "[t]he providers at Desert Springs fell below the standard of care for [Watts]

by not seeking expertise from rheumatology or transferring the patient to a higher level of care at a tertiary care center as soon as the diagnosis of vasculitis was being considered”; that “as soon as the providers at Desert Springs were concerned about a diagnosis of vasculitis, . . . *the providers* should have transferred [Watts] to a tertiary care center so as to prevent progressive damage to imperiled tissues”; and that, “[i]nstead, *the providers* sent [Watts] to a rehabilitation facility.” (Emphases added). Watts’ second medical expert, another physician, also averred that “the positive ANCA associated vasculitis study was not properly followed and [Watts] was discharged to rehabilitation,” and that this “substandard treatment and delay, *caused by the providers* at Desert Springs Hospital, decreased a substantial chance of saving her digits.” (Emphasis added). Because Watts and her experts fail to state specific allegations that Desert Springs, itself, was negligent, they have not satisfied NRS 41A.071’s requirement that the affiants “set forth factually a specific act of alleged negligence *separately* as to [Desert Springs] in simple, concise and direct terms.” (Emphasis added).

Watts nevertheless argues that Count One gave sufficient notice to Desert Springs that she was seeking to hold the hospital responsible for failing to ensure that the medical providers with staff privileges at its facility provided appropriate care. For this premise, Watts relies on our holding in *Oehler v. Humana Inc.*, that “a hospital may be liable for the negligent supervision of a nonemployee physician who has staff privileges under the corporate negligence theory of liability.” 105 Nev. 348, 350-51, 775 P.2d 1271, 1272 (1989). Even under this theory, however, Watts must still comply with NRS 41A.071’s requirements because the underlying claims are “inextricably linked to professional negligence.” *Estate of Curtis v. S. Las Vegas Med. Invs., LLC*, 136 Nev. 350, 353, 466 P.3d 1263, 1266-67 (2020) (holding that where negligent hiring and

supervision claims that are “inextricably intertwined” with professional negligence, those claims must comply with NRS 41A.071). Accordingly, we conclude that the district court erred by denying Desert Spring’s motion for dismissal of Count One. We therefore

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order denying Desert Spring’s motion for partial dismissal and to enter an order dismissing Watts’ hospital negligence claim against Desert Springs.³

Stiglich, C.J.
Stiglich

Gibbons, Sr.J.
Gibbons

Silver, Sr.J.
Silver

cc: Hon. Gloria Sturman, District Judge
Hall Prangle & Schoonveld, LLC/Las Vegas
GGRM Law Firm
John H. Cotton & Associates, Ltd.
Collinson, Daehnke, Inlow & Greco
McBride Hall
Brenske Andreevski & Krametbauer
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

³The Honorable Mark Gibbons and the Honorable Abbi Silver, Senior Justices, participated in the decision of this matter under general orders of assignment.