

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CEDRIC GREENE,
Appellant,
vs.
ALTA MED HEALTH SERVICES,
Respondent.

No. 87027-COA

FILED
APR 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cedric Greene appeals a district court order dismissing a civil action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

Greene filed a complaint under NRS 41.130¹ against respondent Alta Med Health Services (Alta) alleging that it engaged in “medical neglect” by failing to approve a referral to a pain management specialist “for him to see within their medical group” and to “service his pain needs.” He asserted that Alta committed “careless acts and medical neglect.” Alta thereafter filed a motion to dismiss, arguing that Greene’s complaint alleged medical neglect, yet he failed to file a supporting affidavit from a medical expert as mandated by NRS 41A.071. The district court

¹NRS 41.130 states:

Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for his conduct, that person or corporation so responsible is liable to the person injured for damages.

entered a written order granting Alta's motion. The order noted that Greene's claims, to the extent cognizable, sounded in professional negligence and were required to be supported by an expert affidavit, which Greene failed to provide. This appeal followed.

On appeal, Greene argues that he was not required to attach an affidavit to his complaint because he filed his claim pursuant to the personal injury statute.

We review a district court order granting a motion to dismiss de novo. *Zohar v. Zbiegien*, 130 Nev. 733, 736, 334 P.3d 402, 404 (2014). NRS 41A.071(1) provides that "[i]f an action for professional negligence is filed in the district court, the district court shall dismiss the action" if it is filed without an affidavit that "[s]upports the allegations contained in the action." "The distinction between professional and ordinary negligence can be subtle, and [a court must] look to the 'gravamen or substantial point or essence' of each claim to make the necessary determination." *Est. of Curtis v. S. Las Vegas Med. Invs., LLC*, 136 Nev. 350, 354, 466 P.3d 1263, 1267 (2020) (quoting *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 642-43, 403 P.3d 1280, 1285 (2017)).

Where an alleged breach involves "medical judgment, diagnosis, or treatment," it is likely a claim for professional negligence. *Szymborski*, 133 Nev. at 642, 403 P.3d at 1284. Thus, "if the jury can only evaluate the plaintiff's claim after presentation of the standards of care by a medical expert, then it is a [professional negligence] claim." *Id.* "If, on the other hand, the reasonableness of the health care provider's actions can be evaluated by jurors on the basis of their common knowledge and experience, then the claim is likely based in ordinary negligence." *Id.* at 642, 403 P.3d at 1285. This is referred to as a common knowledge exception

to the medical affidavit requirement. To apply the common knowledge exception,

[a] court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or [professional negligence]: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience.

Est. of Curtis, 136 Nev. at 356, 466 P.3d at 1268 (second alteration in original) (quoting *Bryant v. Oakpointe Villa Nursing Ctr., Inc.*, 684 N.W.2d 864, 871 (Mich. 2004)). “If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern [professional negligence] actions.” *Id.* (alteration in original) (quoting *Bryant*, 684 N.W.2d at 871). The common knowledge exception “is extremely narrow and only applies in rare situations.” *Id.*

Here, the district court granted Alta’s motion to dismiss on the basis that the allegations contained therein sounded in professional negligence and Greene failed to attach an affidavit of merit to the complaint. Greene’s complaint alleged that Alta failed to approve his referral to a pain management specialist “to service his pain needs” and that Alta committed “careless acts and medical neglect,” which involved both an action that occurred in the course of a professional relationship and a question of medical judgment, diagnosis, or treatment that was beyond the realm of common knowledge concerning whether Greene required medical treatment from a specialist and whether Alta acted improperly by refusing such treatment. *See id.* Thus, his claim was an allegation of professional negligence requiring an expert affidavit. *See id.* at 358, 466 P.3d at 1269-70 (explaining that allegations which raise questions outside the realm of

common knowledge and experience and require professional judgment constitute allegations of professional negligence subject to NRS 41A.071's affidavit requirement); *cf. Lopez v. Candela*, No. 79590-COA, 2020 WL 5905289, *4 n.5, (Nev. Ct. App. Oct. 5, 2020) (Order of Affirmance) (concluding that a doctor's failure to sign a prescription for pain pills involved medical treatment or judgment as it involved the doctor's judgment about necessary treatment). Therefore, we conclude the district court properly dismissed Greene's complaint. *See* NRS 41A.071. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Maria A. Gall, District Judge
Cedric Greene
Kelly, Trotter & Franzen
Eighth District Court Clerk