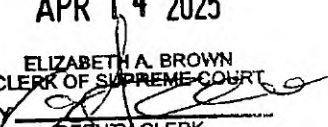


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ARTHUR LAGESON,
Appellant,
vs.
DR. AHMED JARADAT, M.D.; DR.
NADER ELDRIS, M.D.; RN GRETTEL
FONTANA; AND DESERT SPRINGS
HOSPITAL MEDICAL CENTER,
Respondents.

No. 88968-COA

FILED
APR 14 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Eric Arthur Lageson appeals from a district court order granting summary judgment in a civil action. Eighth Judicial District Court, Clark County; Maria A. Gall, Judge.

Lageson initiated a civil action against respondents Dr. Ahmed Jaradat, M.D.; RN Gretel Fontana; and Desert Springs Hospital Medical Center (Desert Springs Hospital) on November 4, 2022.¹ Lageson's complaint alleged that his mother, Esther Lageson, was admitted to Desert Springs Hospital on November 10, 2021, and underwent medical treatment for various conditions, including pneumonia. On November 24, Lageson's mother's condition worsened, and she ultimately passed away.

In his complaint, Lageson primarily alleged that a do not resuscitate (DNR)/do not intubate (DNI) order was initiated without his or his mother's consent. He alleged that, since he had declined hospice care

¹We note that while Dr. Nader Eldris, M.D., was named in the complaint, he was later dismissed from the action. And Lageson does not challenge this dismissal as part of his appeal in this matter.

for his 92-year-old mother, the defendants should have known that Lageson, who was the power of attorney for his mother, was not aware of the DNR/DNI and did not consent to it. He asserted claims for medical malpractice, “substandard medical care,” and wrongful death. Specifically, Lageson asserted that the defendants failed to properly care for and treat his mother for her illnesses. The complaint further alleged that the defendants failed to inform him and his mother of the DNR/DNI order and resulted in his mother’s death.

Thereafter, Dr. Jaradat filed a motion to dismiss Lageson’s complaint. Specifically, Dr. Jaradat argued that each of Lageson’s claims were claims for professional negligence and Lageson did not attach a medical affidavit in support of his claims as required by NRS 41A.071. Fontana and Desert Springs Hospital filed a joinder to the motion. The district court granted the motion in part, finding that to the extent Lageson was attempting to allege professional negligence, dismissal under NRS 41A.071 was mandatory due to his failure to attach a medical affidavit. However, to the extent Lageson alleged that the defendants mistakenly entered the DNR/DNI order, the district court construed this as a claim for ordinary negligence that did not require an affidavit of merit.

In May 2024, Fontana and Desert Springs filed a motion for summary judgment arguing that Lageson’s mother made the decision to be placed on DNR/DNI status and the defendants used their medical judgment in determining that she was competent to make such a decision. Since the decision to enter the DNR/DNI order was made based on medical diagnoses, judgment and treatment, they asserted Lageson’s only remaining claim sounded in professional negligence, which required an NRS 41A.071 expert affidavit. Therefore, the motion argued that Lageson’s complaint was void

and summary judgment was appropriate. Attached to the motion for summary judgment was an affidavit from Dr. Jaradat, as well as medical records, demonstrating that Dr. Jaradat used his medical judgment in finding Lageson's mother had capacity to consent to changing her code status to DNR/DNI. Dr. Jaradat filed a joinder to the motion for summary judgment. Lageson filed an opposition.

Subsequently, the district court entered an order granting the motion for summary judgment. The court found that Fontana and Desert Springs Hospital moved for summary judgment on the basis that the medical records demonstrated that the DNR/DNI decision was made with medical judgment. The court further found that the motion included Dr. Jaradat's affidavit, as well as supporting medical records, demonstrating that Dr. Jaradat used his medical judgment in finding Lageson's mother had capacity to consent to changing her code status to DNR/DNI. The court then found that Lageson did not come forward with admissible evidence that his mother was incompetent and lacked capacity to consent to a change in her DNR/DNI status. The court further found that Lageson did not provide evidence that Dr. Jaradat entered the DNR/DNI order based on non-medical judgment. Instead, the court found that Lageson's opposition consisted of his own interpretation of the medical records and merely alleged that Dr. Jaradat knowingly placed the DNR/DNI order without informing him or Lageson's mother and without their consent. The court found that Lageson was not competent to interpret the medical records, and that his interpretation of the records was not evidence. The court further found that, even considering this argument, the fact that the DNR/DNI order may have been made against Lageson's wishes was irrelevant unless he could establish that Dr. Jaradat failed to use his medical judgment in

deciding that Lageson's mother had capacity to consent to the entry of the order. Thus, the court granted summary judgment in favor of Fontana, Desert Springs Hospital, and Dr. Jaradat based on Lageson's failure to include the required medical expert affidavit with his complaint. Lageson now appeals.

On appeal, Lageson asserts, among other things, that the district court improperly granted summary judgment on the basis that Dr. Jaradat used his medical judgment in determining whether Lageson's mother was competent to change her resuscitation status to DNR/DNI.

We review a district court's grant of summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* Summary judgment is appropriate when there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

Under NRS 41A.071, a professional negligence action requires a supporting affidavit from a medical expert. *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006). Professional negligence is "the failure of a provider of health care, in rendering services, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained and experienced providers of health care." NRS 41A.015. On the other hand, when the claim does not concern a healthcare provider's provision of medical services, ordinary negligence standards apply, under which "medical facilities have a duty to exercise reasonable care to avoid foreseeable harm." *Szymborski v. Spring Mountain Treatment Ctr.*, 133 Nev. 638, 641, 403 P.3d 1280, 1284 (2017) (quoting *DeBoer v. Senior Bridges of Sparks Fam. Hosp. Inc.*, 128 Nev. 406, 412, 282

P.3d 729, 732 (2012)). In *Limprasert v. PAM Specialty Hospital of Las Vegas, LLC*, the Nevada Supreme Court held that, “to distinguish professional from ordinary negligence the relevant question is whether the claim pertains to an action that occurred within the course of a professional relationship.” 140 Nev., Adv. Op. 45, 550 P.3d 825, 835 (2024). “If it does, it sounds in professional negligence and requires an affidavit under NRS 41A.071,” unless it falls under one of the five, narrow statutory *res ipsa loquitur* exceptions enumerated in NRS 41A.100. *Id.*

Here, Lageson asserts that his mother was incapacitated and thus only he, as her power of attorney, had the authority to make a decision as to whether a DNR/DNI order could be placed. However, the determination as to whether or not Lageson’s mother was competent enough to decide that she did not want to be resuscitated, which occurred in the course of respondents rendering services within a professional relationship, involves medical judgment and thus sounds in professional negligence. See *Szymborski*, 133 Nev. at 642, 403 P.3d at 1284 (providing that “[a]llegations of breach of duty involving medical judgment, diagnosis, or treatment indicate that a claim is for medical malpractice”); see also *de Becker v. UHS of Del., Inc.*, 140 Nev., Adv. Op. 58, 555 P.3d 1192, 1197 (2024) (concluding that the allegations that the doctors and hospital failed to communicate with the patient and his family and failed to obtain the patient’s informed consent while rendering services within a professional relationship were claims for professional negligence and thus required an expert affidavit), *cert. denied sub nom. Becker v. UHS of Del., Inc.*, No. 24-641, 2025 WL 76508 (U.S. Jan. 13, 2025).

Additionally, to the extent Lageson summarily suggests that neither he nor his mother were ever informed as to the DNR/DNI order, the

exhibits attached to the motion for summary judgment include medical records and Dr. Jaradat's affidavit indicating that Lageson's mother consented to changing her code status to DNR/DNI. Specifically, Dr. Jaradat's affidavit indicated that Fontana informed him that Lageson's mother said she no longer wanted to be resuscitated and intubated and that Lageson had confirmed that this was his mother's wishes.

Moreover, the affidavit states that, at that time, Lageson's mother was alert and able to answer all orientation questions. Dr. Jaradat's affidavit indicated that he changed Lageson's mother's code status and that he used his medical judgment to determine that Lageson's mother had appropriate capacity to consent to the DNR/DNI order and the order to change the code status was made "based upon the patient's wishes, an assessment of the patient and their capacity, and a physician determination based on their medical judgment that the patient is terminal." Additionally, Dr. Jaradat's affidavit detailed that he used his medical judgment to determine that Lageson's mother was in terminal condition, and she would not improve despite all medical intervention.

But in opposing summary judgment, Lageson failed to produce evidence, such as an affidavit or other materials, to demonstrate a genuine dispute of material fact existed that Lageson's mother was not informed of the DNR/DNI order and did not consent to it beyond Lageson's bare assertions. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) (explaining that once the party moving for summary judgment meets its initial burden to demonstrate there is no genuine dispute of material fact, the burden shifts to the nonmoving party who must "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material

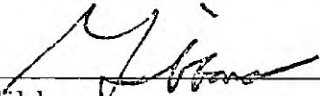
fact"). While his opposition attached certain portions of Lageson's mother's medical records that refer to her being confused at times during her stay at Desert Springs Hospital, these exhibits do not refute Dr. Jaradat's representations that Lageson's mother eventually had the capacity to consent to the DNR/DNI and that she did consent to changing her code status to DNR/DNI. *See id.*


More importantly, once Dr. Jaradat set forth in his affidavit that he used medical judgment to determine that Lageson's mother had appropriate capacity to consent to the DNR/DNI order, this demonstrated that Lageson's remaining claim stemmed from a decision involving medical judgment and treatment and thus constituted a claim for professional negligence which required an expert affidavit. *See* NRS 41A.071. And because Lageson failed to include the required expert witness affidavit with his complaint, the complaint was void ab initio, such that the district court properly granted summary judgment. *See Szymborski*, 133 Nev. at 643, 403 P.3d at 1285; *Wood*, 121 Nev. at 732, 121 P.3d at 1031.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.²


Bulla, C.J.


Gibbons, J.


Westbrook, J.

²Insofar as Lageson raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Maria A. Gall, District Judge
Eric Arthur Lageson
McBride Hall
Hall Prangle & Schoonveld, LLC/Las Vegas
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk