

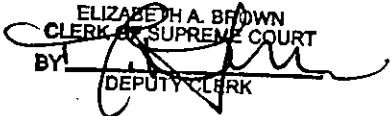
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTORIA L. CRYSTAL,
INDIVIDUALLY AND AS HEIR TO THE
ESTATE OF ALYSSA NICOLE GARCIA,
Appellant,
vs.
RENOWN HEALTH, A NEVADA
NONPROFIT CORPORATION,
Respondent.

No. 87349-COA

FILED

APR 23 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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

Victoria L. Crystal appeals from a district court order granting a motion to dismiss. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Crystal initiated a civil action individually and as the special administrator of the decedent's estate against respondent Renown Health on August 1, 2022. She alleged that the decedent, Alyssa Nicole Garcia, was admitted to Renown Hospital Emergency Room (Renown) "[s]ometime during the first few weeks of the month of July, 2020." The complaint claimed that Garcia was admitted in order to obtain psychiatric treatment. Crystal's complaint further alleged that Renown released Garcia shortly after she was admitted and that, two weeks after she was released, she was walking along the highway when she was fatally hit by a truck and pronounced dead at the scene. In the complaint, Crystal asserted claims for wrongful death and negligence. Specifically, the complaint alleged that Renown "had the duty, authority, discretion, and responsibility for the psychiatric and medical care of [Garcia]." The complaint further alleged

that “Renown . . . had a duty to ensure the safety and well-being of [Garcia] particularly in relation to her mental health care.” Crystal’s complaint contended that Renown was “aware of an existing court order that named [Garcia] as an Adult Ward who could not care for her own personal safety” and “Renown . . . was aware that because [Garcia] was an Adult in Need of Care, a family member or social worker should have been called prior to her release.” The complaint also asserted that Renown knew that Crystal was in the process of arranging transportation for Garcia to the Northern Nevada Adult Mental Health facility for further treatment and that she was supposed to be held at Renown until transfer could occur. Thus, the complaint alleged that if Renown had not discharged Garcia, she would not have died. The complaint further alleged that Renown owed a duty to Garcia to act in her best interest and breached its duty by discharging Garcia without properly assessing her psychiatric or medical condition, without contacting family members before her release, and by not holding Garcia until she could be transported for further treatment.¹

Thereafter, Renown filed a motion to dismiss the complaint pursuant to NRS 41A.071, arguing that all the claims asserted in the complaint sounded in professional negligence. Thus, Renown argued that an expert medical affidavit was required in support of the professional negligence claims pursuant to NRS 41A.071. Renown also argued that the claims were barred by the statute of limitations for professional negligence actions. In opposition, Crystal argued that the claims were rooted in ordinary negligence and not subject to the affidavit requirement because an inadequate discharge does not involve medical judgment, treatment or

¹While the complaint named other defendants, Crystal voluntarily dismissed the other defendants, and only Renown is a respondent on appeal.

diagnosis. She further alleged that the claims fell within the common knowledge exception to the affidavit requirement. Crystal then asserted that the complaint was timely filed within two years pursuant to NRS 11.190, setting forth the statute of limitations for wrongful death actions. Attached to the opposition was a copy of an order directing emergency mental health care from the Pyramid Lake Tribal Court dated March 6, 2020, which stated that Garcia had been on an emergency hold and was “directed to remain in Renown Hospital.”

After a hearing, the district court granted the motion to dismiss. The court found the allegations in the complaint arose out of the decedent’s medical care and treatment at Renown. Thus, the allegations were claims for professional negligence, and the complaint was not supported by the requisite expert medical affidavit. The court further found that the complaint was filed after the expiration of the applicable one-year statute of limitations for professional negligence actions. Thus, the court granted the motion to dismiss. This appeal followed.

On appeal, Crystal argues that the district court erred in determining that all of her claims, which were grounded in facts related to Garcia’s discharge from Renown, raised issues of professional negligence subject to the expert affidavit requirement.² Conversely, Renown argues that the allegations connected to all the claims sound in professional

²While Crystal’s opening brief asserts that the claims within her complaint fit within the common knowledge exception of the expert affidavit requirement, as she acknowledged in her reply brief, the Nevada Supreme Court has recently abrogated the common knowledge exception. See *Limprasert v. PAM Specialty Hosp. of Las Vegas LLC*, 140 Nev., Adv. Op. 45, 550 P.3d 825, 835 (2024). Given Crystal’s concession on this point, we need not address this issue.

negligence and thus were subject to the requirement to file an expert affidavit attached to the complaint.

“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). In adjudicating a motion to dismiss, all factual allegations in the complaint are deemed as true and all inferences are drawn in the plaintiff’s favor. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A “complaint should be dismissed only if it appears beyond a doubt that [the plaintiffs] could prove no set of facts, which, if true, would entitle [them] to relief.” *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). We also review a “district court’s decision to dismiss [a] complaint for failing to comply with NRS 41A.071 *de novo*.” *Yafchak v. S. Las Vegas Med. Inv., LLC*, 138 Nev. 729, 730, 519 P.3d 37, 40 (2022).

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)). To determine how to characterize a claim, this court looks to the gravamen of

each claim “rather than its form to see whether each individual claim is for medical malpractice or ordinary negligence.” *Id.* at 643, 403 P.3d at 1285.

In arguing that the district court erred in dismissing the complaint, Crystal cites to *Szymborski* to assert that a medical facility breaches its duty of reasonable care under ordinary negligence principles when the facility performs the nonmedical function of discharging a patient without notifying family members. In *Szymborski*, a father sued his adult son’s health care treatment center when the facility released the son to his father without notifying the father, despite employees’ assurances to the father that his son would not be released to his house. 133 Nev. at 639-40, 403 P.3d at 1282-83. Subsequently, the son vandalized the father’s home. *Id.* As the Nevada Supreme Court later explained, in *Szymborski* “[w]e determined the gravamen of the father’s claim was that the treatment center breached its ordinary duty of care to the nonpatient father because the allegations pertained to the center performing nonmedical functions.” *Limprasert*, 140 Nev., Adv. Op. 45, 550 P.3d at 830.

Here, to the extent Crystal’s complaint included allegations related to Renown’s purported failure to treat or diagnose Garcia, we conclude the claims associated with these allegations were properly construed as sounding in professional negligence. Specifically, Crystal’s complaint alleged that Renown failed to assess and provide medical treatment for Garcia’s medical and psychiatric condition, and that her condition was not properly treated before she was discharged. Because these allegations relate to a “breach of duty involving medical judgment, diagnosis, or treatment,” the allegations sound in professional negligence. *See Szymborski*, 133 Nev. at 642, 403 P.3d at 1284 (“Allegations of [a] breach of duty involving medical judgment, diagnosis, or treatment indicate that a

claim is for [professional negligence].”). As a result, the claims associated with these allegations were properly dismissed based on Garcia’s failure to provide the required medical expert affidavit. *See* NRS 41A.071.

Although certain of Crystal’s allegations sounded in professional negligence, as reflected above, Crystal’s complaint also alleged claims that appear to sound in ordinary negligence. Specifically, Crystal alleged that Renown failed to notify family members or social workers of Garcia’s release and that Renown failed to hold Garcia until she could be transported to a different facility, despite being aware of Crystal’s planned arrangements for Garcia’s transportation to a different facility. The complaint further asserted that Renown was informed that the then Director of Pyramid Lake Social Services and Crystal were in the process of arranging transportation for Garcia to the Northern Nevada Adult Mental Health facility, but Renown nonetheless released Garcia without contacting a family member or social worker or waiting for transportation for Garcia. Additionally, the complaint asserted that Renown was aware Garcia was an adult ward who could not care for her own personal safety and that a family member or social worker should have been called prior to her release pursuant to an existing court order. Accepting these allegations as true and drawing all inferences in favor of Crystal as we must do, *Buzz Stew*, 124 Nev. at 227-28, 181 P.3d at 672, we cannot determine that these specific allegations concerning the manner of Garcia’s discharge sounded in professional negligence at this time.

To the extent Renown asserts that whether Garcia should have been held until she could be transferred to a different facility for further medical treatment or whether it should have contacted someone prior to Garcia’s discharge contemplates a medical decision or judgment as to

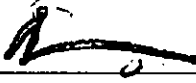
Garcia's psychiatric or medical condition, we are not persuaded by this argument under the allegations raised here. Notably, the allegation that Renown released Garcia without contacting a family member or social worker and without waiting for transportation for Garcia, despite being aware of the existing court order and Crystal's planned arrangements for Garcia's transportation to a different facility, do not concern the medical decision to discharge Garcia, but rather, the manner in which Garcia was discharged from Renown. Under these circumstances, we conclude Crystal's complaint contained allegations that suggest Renown may have breached its duty of reasonable care under ordinary negligence principles by failing to act reasonably with respect to how Garcia was discharged from Renown, which is a nonmedical function. *See DeBoer*, 128 Nev. at 411-12, 282 P.3d at 732 ("Aside from the wide range of medical services healthcare-based facilities provide, they also offer diverse nonmedical services to the public, including, but not limited to, aftercare planning with social workers."); *Szymborski*, 133 Nev. at 642, 403 P.3d at 1283-84 (determining that a claim sounded in ordinary negligence where medical providers discharged a patient to a location they knew he should not be discharged resulting in property damage).


Because Crystal's complaint was dismissed on an NRCP 12(b)(5) motion prior to any discovery being conducted, we are confined solely to reviewing Crystal's complaint when determining if there are any claims that do not sound in professional negligence. *Yafchak*, 138 Nev. at 732, 519 P.3d at 40-41. And looking at the face of the complaint, at this juncture, without discovery, it cannot be said that Crystal's allegations with respect to Garcia's manner of discharge sound in professional negligence versus ordinary negligence. Thus, we conclude the district court erred in

summarily determining that Crystal's entire complaint sounded in professional negligence and in dismissing her complaint for failure to attach an affidavit of merit. *Szymborski*, 133 Nev. at 647, 403 P.3d at 1287 (concluding that certain claims did not sound in professional negligence where the claims did not involve medical diagnosis, treatment or judgment, and therefore should not have been dismissed for failure to attach the NRS 41A.071 affidavit). And because Crystal's wrongful death claim was based on the same set of facts and theories of fault giving rise to the negligence claim, the district court likewise improperly dismissed this claim for failure to provide the required expert affidavit. *Id.* at 643, 403 P.3d at 1285.

Accordingly, based on the reasoning set forth above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³To the extent we affirm the dismissal of Crystal's professional negligence claims for failure to include the required affidavit of merit, we need not reach the district court's alternative determination that the complaint was untimely filed beyond the applicable statute of limitations period for professional negligence actions. To the extent Crystal's allegations may have sounded in ordinary negligence, Renown did not assert below that the statute of limitations had expired for ordinary negligence claims and we therefore do not address it.

cc: Hon. Connie J. Steinheimer, District Judge
The702Firm
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