

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC, D/B/A
DESERT SPRINGS HOSPITAL,

Petitioner,

v.

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, MD, 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,
D.O.; PLATINUM HOSPITALISTS, LLP,

Real Parties in Interest.

Case No.: 85096

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Clerk of Supreme Court

REAL PARTY IN
INTEREST

LASHAWANDA
WATTS'
ANSWERING BRIEF

REAL PARTY IN INTEREST'S ANSWERING BRIEF

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Disclosure Statement Pursuant to NRAP 26.1

Pursuant to NRAP 26.1, the undersigned counsel for Real Party in Interest, Lashawanda Watts, certifies that Lashawanda Watts is an individual who is represented by the undersigned counsel and is not a governmental entity and has no parent corporations.

The name of the only law firm that has appeared on behalf of Lashawanda Watts, or is expected to appear in this court, is Brenske Andreevski & Krametbauer. The attorneys in Brenske Andreevski & Krametbauer are William R. Brenske, Esq., Jennifer R. Andreevski, Esq., Ryan D. Krametbauer, Esq., and Scott M. Brenske, Esq.

The litigant's true name is Lashawanda Watts. She is not using a pseudonym.

Respectfully submitted this 21st day of October, 2022.

/s/ William R. Brenske

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Routing Statement

Although Real Party in Interest disputes Petitioner's implication that her Hospital Negligence claim is frivolous, she does not dispute Petitioner's Routing Statement analysis and agrees this case is most properly retained by the Nevada Supreme Court.

Dated this 21st day of October, 2022.

/s/ William R. Brenske

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELIEF REQUESTED

The central issue in Valley Health System, LLC dba Desert Springs Hospital's (hereinafter "Desert Springs Hospital") writ petition is whether Ms. Lashawanda Watt's Complaint against it sufficiently states a cause of action for Hospital Negligence. Real Party in Interest, Lashawanda Watts, seeks to hold Desert Springs Hospital accountable for its failure to provide appropriate medical care during her hospital admission in July 2020 and for failing to transfer her to an appropriate medical facility for specialized treatment of vasculitis (inflammation of the blood vessels). As a result of the negligence of Ms. Watts' medical providers, her vasculitis went undiagnosed and untreated. By the time Ms. Watts' vasculitis was diagnosed and treated at a subsequent medical facility, Ms. Watts' condition had declined to the point where she had suffered irreversible tissue damage, causing some of her toes to fall off and others to require amputation.

At the onset of litigation, Desert Springs Hospital filed a Motion for Partial Dismissal of Plaintiff's Complaint seeking to dismiss Ms. Watts' cause of action for Hospital Negligence. Desert Springs Hospital argued Ms. Watts' hospital negligence claims were allegedly invalid because they were based on the actions/omissions of its co-Defendants rather than constituting separate

1 institutional or nursing negligence claims. Desert Springs Hospital also
2 argued it was appropriate to dismiss the Hospital Negligence claim from Ms.
3 Watts' Complaint because she could seek to amend her Complaint at a
4 subsequent date if discovery revealed anything more against it. (P.A. 193).

5
6 District Court Judge Gloria Sturman correctly denied Desert Springs
7 Hospital's motion indicating Desert Springs Hospital was properly put on
8 notice of the claims asserted against it – including the Hospital Negligence
9 claim. (P.A. 197). The Court further noted the purpose of the affidavit
10 requirement of NRS 41A.071 was to “weed out” frivolous medical malpractice
11 Complaints and Ms. Watts' Complaint, when read together with the affidavits,
12 was not frivolous.” (P.A. 198). Given Ms. Watts' claims were adequately
13 supported by affidavits and Desert Springs Hospital was properly put on notice
14 of the claims against it, the Court did not err when denying Desert Springs
15 Hospital's Motion to Dismiss.
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20 Following the filing of the Notice of Entry of Order denying Desert
21 Springs Hospital's Motion for Partial Dismissal of Plaintiff's Complaint,
22 Petitioner waited over six months to file the present writ petition. Petitioner
23 seeks to compel the lower court to dismiss Ms. Watts' Hospital Negligence
24 claim. This Court thereafter requested Ms. Watts to respond to Desert Springs
25 Hospital's writ petition. For the reasons set forth below, Desert Springs
26
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Hospital's Petition for Writ of Manadamus, or in the alternative, Writ of Prohibition should be denied.

II. ISSUES PRESENTED

1. Is Desert Springs Hospital's Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition barred by the doctrine of laches?
2. When preparing a medical malpractice Complaint against a hospital, is it sufficient for a medical malpractice plaintiff to allege a hospital's "medical providers" (i.e. its agents or employees) breached the standard of care?
3. Is a medical malpractice plaintiff required to make institutional or nursing negligence allegations against a hospital for her hospital negligence claim to be valid?
4. Can a medical malpractice plaintiff assert alternative claims against a hospital for hospital negligence and vicarious liability for the negligence of medical providers working at that hospital?

III. STATEMENT OF THE CASE

On July 22, 2021, Lashawanda Watts filed her medical malpractice Complaint in the Eighth Judicial District Court for Clark County, Nevada. (P.A. 1). She asserted professional negligence claims against Desert Springs Hospital and several individual physicians and their corporations. Soon

thereafter and prior to answering the Complaint, Desert Springs Hospital filed a Motion for Partial Dismissal of Plaintiff's Complaint on August 13, 2021, in which it requested the Court to dismiss Ms. Watts' Hospital Negligence claim. (P.A. 54). Ms. Watts filed her opposition to Desert Springs Hospital's motion on August 27, 2021. (P.A. 118). Desert Springs Hospital filed its Reply in Support of its Motion for Partial Dismissal of Plaintiff's Complaint on September 7, 2021. (P.A. 136). Thereafter, Desert Springs Hospital's motion was brought to hearing on October 12, 2021, and an Order denying the motion was entered on January 26, 2022. (P.A. 145). The Notice of Entry of Order was filed the following day – on January 27, 2022. (P.A. 160). Over six months later, on August 1, 2022, Petitioner filed the present Petition for Writ of Mandamus and/or Prohibition in which it seeks an Order from this Court compelling the District Court to grant its Motion for Partial Dismissal of Plaintiff's Complaint.

IV. LEGAL ANALYSIS

A. The Writ Petition is Barred by the Doctrine of Laches

A writ of mandamus or prohibition is an extraordinary remedy to compel performance of a judicial act when no plain, speed, or adequate remedy at law exists. Smith v. Eighth Judicial District Court, 107 Nev. 674, 677 (1991). As an extraordinary remedy, writs of mandamus or prohibition are governed by

1 the doctrine of laches. Building and Const. Trades Council of Northern Nevada
2 v. State ex rel. Public Works, 108 Nev. 605, 611 (1992). When analyzing
3 whether laches should preclude the consideration of a writ petition, the Court
4 should determine if: 1) there was an inexcusable delay in filing the writ
5 petition; 2) an implied waiver arose; and 3) the respondent has suffered
6 prejudice as a result of the delay. State v. Eighth Judicial District Court, 118
7 Nev. 140, 148 (2002).

8
9
10 In this case, Desert Springs Hospital waited over six months to file its
11 writ petition. Since that time, the parties have been engaging in discovery as if
12 Ms. Watts' claims against Desert Springs Hospital will go before the jury.
13 Discovery is still ongoing and a jury trial is currently scheduled for September
14 2023. By participating in the discovery process, Desert Springs Hospital has
15 impliedly waived the issue set forth in this petition and the delay has
16 prejudiced Ms. Watts because she has actively worked on proving the claims.
17 Even more significantly, there was no reason for delay. Desert Springs
18 Hospital should have, and could have, filed its writ petition soon after the
19 District Court entered its ruling. Given the inexcusable delay, the implied
20 waiver, and the prejudice to Ms. Watts, this writ should be denied based on the
21 doctrine of laches.

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B. Standard of Review

Even if the doctrine of laches does not preclude review of this petition, it should still be denied. When considering a Motion to Dismiss, as the District Court did, a Plaintiff's claim should only be dismissed if it appears beyond a doubt that the claimant would not be entitled to relief even if the facts pled in the Complaint were true. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228 (2008). In addition, all facts in the Complaint must be construed liberally and all factual allegations must be accepted as true. Blackjack Bonding v. City of Las Vegas Municipal Court, 116 Nev. 1213, 1217 (2000). This Court must review challenges of the District Court's decisions on Motions to Dismiss *de novo*. Buzz Stew at 228.

In this case, the District Court properly accepted the facts contained in Ms. Watts' Complaint, coupled with her medical malpractice affidavits, as true and found Ms. Watts had sufficiently pled her Hospital Negligence claim against Desert Springs Hospital. As such, it was appropriate to deny the motion for partial dismissal of Plaintiff's Complaint.

C. A Hospital Negligence Claim May Be Based on the Actions or Omissions of Persons with Staff Privileges at the Hospital

Desert Springs Hospital argues Ms. Watts' claim for Hospital Negligence is invalid because she does not outline the negligent conduct of any individual medical providers *other* than its co-Defendants. It also contends

1 NRS 41A.071 requires a medical malpractice plaintiff to independently
2 identify the actors of the hospital staff that fell below the minimum acceptable
3 standard of care. A plain reading of the statute demonstrates Desert Springs
4 Hospital's argument fails.

6 NRS 41A.071 requires a medical malpractice plaintiff to attach an
7 affidavit to the Complaint that identifies by name, *or by conduct*, the negligent
8 actions/omissions of the Defendant. NRS 41A.071 (2017) (emphasis added).
9 Here, although Ms. Watts was not privy to the names of every single person
10 who provided her care in Desert Springs Hospital, she identified the negligent
11 conduct that occurred.

14 Specifically, Ms. Watts alleged:

- 16 • “The providers at Desert Springs Hospital neglected to provide
17 appropriate treatment for vasculitis when the diagnosis of vasculitis was
18 initially suspected.” (P.A. 8).
- 20 • “... the vasculitis panel on 7/23/20 ... was resulted on 7/26/20, but no
21 provider ... made note of or mentioned this result. ...” (P.A. 9).
- 23 • “... as soon as the providers at Desert Springs Hospital were concerned
24 about a diagnosis of vasculitis ... the providers should have transferred
25 Ms. Watts to a tertiary care center so as to prevent progressive damage
26 to imperiled tissues. ...” (P.A. 10).

- “The substandard treatment and delay, caused by the providers at Desert Springs Hospital, decreased a substantial chance of saving her digits from gangrene and ultimately amputation/auto-amputation.” (P.A. 10).

These allegations clearly identify the acts and omissions of the medical providers at Desert Springs Hospital that fell below the minimum acceptable standard of care. All these allegations were also mentioned in the expert affidavits attached to Ms. Watts’ Complaint. (P.A. 34-53). Given Ms. Watts identified the negligent acts/omissions of Desert Springs Hospital by conduct, she complied with NRS 41A.071.

D. A Hospital Negligence Claim May Be Based on a Corporate Theory of Liability Rather than Institutional or Nursing Negligence

Desert Springs Hospital’s primary contention is it cannot be held liable under a theory of hospital negligence because Ms. Watts did not include a claim for institutional or nursing negligence. Petitioner is incorrect.

A claim for hospital negligence is a corporate theory of liability that can be based on the negligence of the facility. Oehler v. Humana Inc., 105 Nev. 348, 350 (1989). This Court has found a hospital negligence claim may be based on the negligent care of a patient in a hospital by any medical provider with staff privileges at that hospital. Id. There is no requirement to specifically criticize the nursing care or an institutional practice – instead a hospital negligence claim may be based on the failures of those with privileges at the hospital.

1 Here, it must also be remembered that Desert Springs Hospital brought
2 its motion at the onset of the litigation. Discovery had not yet commenced,
3 and Ms. Watts was relying on the set of medical records she was able to obtain
4 from Desert Springs Hospital *prior* to filing her lawsuit. Desert Springs
5 Hospital was in control of the evidence and none of its representatives,
6 employees, agents, or staff had been deposed. Desert Springs Hospital's
7 argument that Ms. Watts' claims must be dismissed at the onset of litigation
8 because she did not specifically identify nursing or institutional negligence
9 claims fails.
10

11
12
13 Ms. Watts received inadequate care at Desert Springs Hospital. She
14 made her allegations against the individually named physician Defendants
15 based on the information she was able to glean from the medical records
16 provided by Desert Springs Hospital prior to the filing of the lawsuit. She also
17 claimed Desert Springs Hospital was negligent by failing to provide proper
18 care to her during her stay. Ms. Watts had no way of "reading between the
19 lines" of her medical records to provide more details in her Complaint without
20 doing discovery.
21
22

23
24 Ms. Watts knows people other than the named physician Defendants
25 treated her during her stay at Desert Springs Hospital. She knows information
26 exists that is not specifically laid out in the medical records. She knows
27
28

1 information will be learned during the discovery process. Based on the
2 information that was available at the time the Complaint was filed, Ms. Watts
3 and her experts indicated the medical providers at Desert Springs Hospital fell
4 below the minimum acceptable standard of care and explained why they did.
5 This properly put Desert Springs Hospital on notice that Ms. Watts was
6 seeking to hold it responsible for failing to ensure the medical providers with
7 staff privileges at its facility provided appropriate care to Ms. Watts.
8

9
10 **E. Alternative Theories of Liability are Permitted Under Nevada Law**
11

12 Desert Springs Hospital has suggested Ms. Watts may not plead hospital
13 negligence theories that mirror her vicarious liability theories. Pursuant to
14 NRCP 8(d), however, a “party may set out two or more statements of a claim
15 ... either in a single count ... or in separate ones.” NRCP 8(d) (2019). Such
16 separate claims may hinge on identical questions of fact. *See, Carrigan v.*
17 *Ryan*, 109 Nev. 797, 800 (1993). Nevada is a notice-pleading state and courts
18 must liberally construe “pleadings to place into issue matter which is fairly
19 noticed to the adverse party.” *Chavez v. Robberson Steel Co.*, 94 Nev. 597,
20 599 (1978).
21
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23

24 The fact that Ms. Watts’ claim for Hospital Negligence is substantially
25 similar to her claim for vicarious liability does not render it invalid. Ms. Watts
26 may plead alternative theories of liability. Here, she has placed Desert Springs
27
28

1 Hospital on notice that she intends to seek compensation for its failure to
2 provide proper medical care – either by any of the other named defendants or
3
4 by another person with staff privileges at Desert Springs Hospital.

5 In this respect, it must also be noted that there is no allegation that Ms.
6 Watts was treated by anybody who did not have staff privileges at Desert
7
8 Springs Hospital. Ms. Watts was treated by individuals with staff privileges –
9 including Desert Springs Hospital’s co-Defendants. Because Desert Springs
10 Hospital’s medical providers failed to provide appropriate care to Ms. Watts,
11
12 her claim for Hospital Negligence is valid.

13 **F. Writ Relief is Inappropriate**

14 Petitioner asserts writ relief is appropriate because it allegedly has no
15
16 “meaningful ability to defend itself against this undefined claim.” (Petition at
17 21:26-27). It characterizes Plaintiff’s Complaint as “threadbare.” Ms. Watts’
18
19 Complaint is anything but threadbare and Defendant is on ample notice of the
20
21 claims asserted against it.

22 Ms. Watts’ Complaint is 32 pages long and includes two additional
23
24 exhibits with affidavits from physicians who support her claims. (P.A. 1-53).
25
26 Desert Springs Hospital outlines a portion of Ms. Watts’ Complaint in it
27
28 Petition – further demonstrating the Complaint is particularly detailed.
(Petition at 12:15-14:14). As the Complaint makes clear, Ms. Watts sets forth

1 the facts of her hospital stay in detail and how Defendants fell below the
2 minimum acceptable standard of care.

3
4 As set forth above, Ms. Watts' Hospital Negligence claim is based on
5 the failure of individuals with staff privileges at Desert Springs Hospital to
6 provide appropriate care at its facility. The fact that Ms. Watts does not name
7 specific nurses or institutional issues does not render her Hospital Negligence
8 claim invalid.

9
10 Medical malpractice defendants, such as Desert Springs Hospital, are
11 increasingly attempting to ask courts to force injured plaintiffs to be able to
12 prove every element of their claims *before* discovery begins. They ask Courts
13 to interpret the affidavit requirement under NRS 41A.071 in a manner that is
14 far more stringent than it was intended. The affidavit requirement under NRS
15 41A.071 was intended to weed out frivolous medical malpractice claims – it
16 was not intended to require plaintiffs to prove their claims before discovery
17 begins. *See, Peck v. Zipf*, 133 Nev. 890, 896 (2017).

18
19 Medical malpractice claimants have only one year from the date of
20 malpractice to gather medical records, hire experts, and draft their Complaints.
21 NRS 41A.097 (2004); NRS 41A.071 (2015). At the time their Complaint is
22 filed, they do not yet have subpoena power and cannot yet conduct written
23 discovery or take depositions. They must rely on the records produced pre-
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1 litigation by the providers they intend to sue. Requiring medical malpractice
2 claimants to be able to prove every aspect of their case before discovery has
3 started would close the doors of justice to people injured at the hands of their
4 physicians.

5
6 **V. CONCLUSION**
7

8 Overall, writ relief is inappropriate in this case. Ms. Watts appropriately
9 set forth her cause of action for Hospital Negligence against Desert Springs
10 Hospital and identified the conduct of which she complains. Her expert
11 physicians indicated the referenced conduct fell below the minimum
12 acceptable standard of care in their affidavits that were attached to Ms. Watts'
13 Complaint. The fact that the actions identified are substantially similar to the
14 conduct Ms. Watts faults Desert Springs Hospital's co-Defendants for
15 performing is irrelevant. A hospital negligence claim is properly based on the
16 failure of any person with staff privileges (whether an employee or not) to
17 provide appropriate medical care.
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1 Desert Springs Hospital's motion to dismiss Ms. Watts' hospital
2 negligence claim, which was filed before the start of discovery, was properly
3 denied. Petitioner is on notice of the claims brought against it and Ms. Watts'
4 Hospital Negligence claim should be permitted to go forward.
5

6 Dated this 21st day of October, 2022.
7

8 /s/ William R. Brenske

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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6) because:
5

6 This brief has been prepared in a proportionally spaced typeface using
7
8 Microsoft Word 2007 in Times New Roman, 14-point font.

9 2. I further certify that this brief complies with the page- or type-
10 volume limitations of NRAP 21(d) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface
12 of 14 points or more and contains 2,793 words.
13

14 3. Finally, I hereby certify that I have read this Answering Brief,
15 and to the best of my knowledge, information, and belief, it is not frivolous or
16 interposed for any improper purpose. I further certify that this brief complies
17 with all applicable Nevada Rules of Appellate Procedure.
18

19
20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 4. I understand that I may be subject to sanctions in the event that
2 the accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.
4

5 Dated this 21st day of October, 2022.
6

7 /s/ William R. Brenske

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VERIFICATION

STATE OF NEVADA)

)ss:


COUNTY OF CLARK)

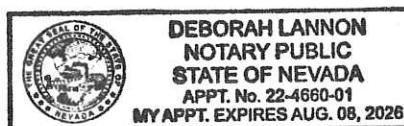
Under penalty of perjury, the undersigned declares that he is the attorney for Real Party in Interest Lashawanda Watts and knows the contents of the foregoing Real Party in Interest's Answering Brief; that the pleading is true of his own knowledge, excepts as to those matters stated on information and belief, and that as to such matters he believes to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010.


Ryan D Krametbauer

Subscribed and sworn to before me
this 20th day of October, 2022 by


Ryan Krametbauer


NOTARY PUBLIC, in and for the
County of Clark, State of Nevada.



CERTIFICATE OF SERVICE

I certify that on the 21st day of October, 2022, I served a copy of the
**REAL PARTY IN INTEREST LASHAWANDA WATTS' ANSWERING
BRIEF** through the Court's electronic filing system consistent with
N.E.F.C.R. 8.

DATED this 21st day of October, 2022.

/s/ Barbara Little
An employee of Brenske Andreevski & Krametbauer