IN THE SUPREME COURT OF THE STATE OF NEVADA

Estate of MARY CURTIS, deceased; LAURA LATRENTA, as Personal Representative of the Estate of MARY CURTIS; and LAURA LATRENTA, individually, Plaintiffs/Appellants,

Appellants,

vs.

ANNABELLE SOCAOCO, NP; IPC HEALTHCARE, INC. aka THE HOSPITALIST COMPANY, INC.; INPATIENT CONSULTANTS OF NEVADA, INC.; IPC HEALTHCARE SERVICES OF NEVADA, INC.; HOSPITALISTS OF NEVADA, INC.,

Respondents.

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NRAP 26.1 DISCLOSURE

Pursuant to Nevada Rule Appellate Procedure 26.1, counsel for Appellants certifies that Appellant Laura Latrenta is a natural person residing in New Jersey and is the Administratrix of the Estate of Mary Curtis. No publicly owned corporation has a financial interest in the prosecution of this appeal.

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JURISDICTIONAL STATEMENT

A Motion to Reconsider was granted in this matter by the District Court, dismissing Appellant Ms. Latrenta's negligence claims against Appellees Annabelle Socaoco, N.P.; IPC Healthcare, Inc. aka The Hospitalists Company Inc.; Inpatient Consultants of Nevada Inc.; IPC Healthcare Services of Nevada Inc.; and Hospitalists of Nevada Inc., on April 25, 2019. A Notice of Appeal was filed on July 1, 2019. Appellants Appendix0367-0369.[1] This Court has jurisdiction to hear this appeal pursuant to NRAP 3A(b)(1).

ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court because the question presented is an issue of statewide public importance and upon which there is an inconsistency in the decision of the district court and the language of NRS 41A.097(2). NRAP 17(a)(11). The statute provides, in relevant part, that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first." NRS 41A.097(2). This Court has further specified that the accrual date for NRS 41A.097(2)'s one-year discovery period ordinarily presents a question of fact

[1] Appellants Appendix, hereinafter "APP___".

to be decided by a jury, *Winn v. Sunrise Hosp. & Medical Center*, 277 P.3d 458, 459 (Nev. 2012), and that the question of "reasonable diligence" is likewise one for a jury. *Bemis v. Estate of Bemis*, 967 P.2d 437, 441 (Nev. 1998). Relying on facts upon which reasonable minds could differ as to the interpretation thereof, the lower court erroneously found the point at which the evidence incontrovertibly demonstrated that the plaintiff was put on inquiry notice of the cause of action.

Additionally, the district court concluded in this case that notice inquiry as to the identity of the tortfeasors was not material to the question of discovery under NRS 41A.097(2). This conclusion flies in the face of the Supreme Court's decision and reasoning in *Siragusa v. Brown*, 971 P.2d 801 (Nev. 1998), that a plaintiff's cause of action does not accrue until she has or should have discovered the necessary facts, including the identity of the specific tortfeasor.

STATEMENT OF ISSUES

1. Are litigants, the Respondents here, entitled to reconsideration of prior orders without offering sufficient bases therefor?

2. May a district court reconsider a prior order without identifying the existence of new evidence in front of the court or a change in the law, or without identifying the presence of a clear error in the prior order?

3. Does inquiry notice under the Discovery Rule apply to notice of the

identity of a potential tortfeasor as well as notice of the actionable harm?

4. May a district court decide that the presence of an illegible name on a document irrefutably demonstrates that a plaintiff was put on inquiry notice of the identity of this person as a potential tortfeasor?

STATEMENT OF THE CASE

This appeal pertains to allegations of nursing home abuse and neglect filed as a Complaint in the District Court of Clark County, Nevada. Appellant Laura Latrenta ("Laura Latrenta" or "Ms. Latrenta") appeals an Order entered on April 24, 2019, APP0396-401. Granting reconsideration and dismissing her Complaint against Annabelle Socaoco, NP, IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services of Nevada, Inc., and Hospitalists of Nevada, Inc. (collectively, "IPC" or "Respondents), to which a timely Notice of Appeal was filed.[2] Given that the dates of this case's procedural milestones are material to this appeal, further case detail is recounted in STATEMENT OF FACTS immediately below. On July 8, 2019, this appeal was assigned to the NRAP 16 Settlement Program. However, on July 9, 2019, this Court entered an Exemption From Settlement Program – Notice to File Documents.

[2] Ms. Latrenta's own subsequent Motion for Reconsideration was denied *in toto*. APP0364-0366.

STATEMENT OF FACTS

On March 7, 2016, a Nevada nursing home, Life Care Center of Paradise Valley ("LCC"), administered to nursing home resident Mary Curtis morphine not prescribed for her. LCC contacted Mary Curtis' daughter, Ms. Latrenta, and conceded their error. Nevertheless, the nursing home failed to timely address their mistake in administering the drug, and, Mary Curtis subsequently died, March 11, 2016. Her death certificate, issued ***April 18, 2016,*** APP0255, identifies her immediate cause of death as morphine intoxication. The medical examiner who completed the death certificate contacted Ms. Latrenta four days earlier, on ***April 14, 2016***, and Ms. Latrenta spoke to the examiner, who discussed his findings. APP0327. With only these facts and only the identity of LCC known, on June 30, 2016, Ms. Latrenta requested her mother's complete record from LCC.

On February 2, 2017, Ms. Latrenta filed a Complaint against LCC, its operators, managers, and administrators, alleging abuse/neglect of Ms. Latrenta's mother Mary Curtis, wrongful death, and breach of contract. Specifically, Ms. Latrenta's Complaint alleged (1) abuse/neglect of an older person (N.R.S. 41.1395), (2) wrongful death, on behalf of the Estate of Mary Curtis (N.R.S. 41.0185), (3) wrongful death on behalf of Laura Latrenta herself (N.R.S. 41.0185), and (4) a bad faith tort. APP0001-0009.

After conversation with the medical examiner, and further investigation by counsel and review by medical experts, on April 14, 2017, in Case No. A-17-754013-C, Ms. Latrenta filed a separate Complaint against Defendant Samir Saxena, M.D., whom Ms. Latrenta believed was partially responsible for the delay in sending Mary Curtis to the hospital following the morphine mis-dosing. At this point, Ms. Latrenta had in her possession documents showing some of the subsequent steps taken at LCC following the mis-dosing, including a physician's prescription (Narcan) and the post-acute progress note documenting administration of the prescription. Further, the coroner's investigation report mentioned only this physician, and stated:

> The decedent became excessively sedated, and a physician was called to examine the decedent; and that afternoon the physician administered Narcan and Clonidine, with follow-up physician order for close observation and monitoring every 15 minutes for one hour, and every 4 hours thereafter.

Coroner's Report, APP0265.

The medical records listed the attending physician as Dr. Saxena. However, one Annabelle Socaoco, a Nurse Practitioner (see below), actually signed the post-acute progress note, entering the orders for Narcan and observation, using illegible script in both signature and print form. As such, Ms. Latrenta believed that Dr. Saxena had directed the medical post-overdose steps taken in Mary Curtis's case.

In the Complaint against Dr. Saxena, Ms. Latrenta alleged that despite Dr. Saxena's notice and knowledge that LCC wrongfully administered morphine to Ms. Curtis, Dr. Saxena failed to timely order that she be sent to an acute care setting, to be closely monitored and provided the appropriate treatment to counteract the morphine. Specifically, the Dr. Saxena Complaint alleged (1) abuse/neglect of an older person (N.R.S. 41.1395), (2) wrongful death, on behalf of the Estate of Mary Curtis (N.R.S. 41.0185), (3) wrongful death on behalf of Laura Latrenta herself (N.R.S. 41.0185), and (4) medical malpractice. APP0027-38. The district court consolidated the case against Dr. Saxena with the case against LCC on October 10, 2017, finding and concluding that "common questions of law and fact exist between the two cases." APP0058.

On several occasions throughout the litigation, Ms. Latrenta requested incident reports from LCC regarding Mary Curtis. On August 9, 2017, Ms. Latrenta served on LCC her first set of production requests, including a request for incident/accident reports. Then, on September 25, 2017, Ms. Latrenta's counsel sent a letter to LCC's counsel regarding outstanding discovery, including incident reports. Letter, APP00122-129.

Over five months after her initial request for incident reports, on October 24, 2017, Ms. Latrenta's counsel discussed outstanding discovery with LCC's counsel. LCC refused to produce incident reports without a protective order. Due to the

continued refusal, on November 8, 2017, Ms. Latrenta filed a motion to compel requesting that LCC be ordered to produce, *inter alia*, incident reports. APP0061-170.

On December 4, 2017, Ms. Latrenta's counsel, via email, informed LCC's counsel that she needed Mary Curtis' incident reports for depositions taking place that week and offered to treat Mary Curtis' incident reports as confidential until the following week's hearing on the motion to compel.

On December 6, 2017, Ms. Latrenta's counsel deposed Cecilia Sansome ("Nurse Sansome"), a nurse formerly employed at LCC's nursing home facility. During Nurse Sansome's deposition, and for the first time, Ms. Latrenta learned of the involvement of Annabelle Socaoco ("N.P. Socaoco"), the nurse practitioner, in the injury and death of Mary Curtis. Specifically, Ms. Latrenta learned that after Nurse Sansome assessed Mary Curtis, she attempted to call the physician (Dr. Saxena) through the answering service and was told that a Nurse Practitioner Socaoco would call her back. Shortly thereafter, N.P. Socaoco called and, having been informed of Mary Curtis's circumstances, instructed that Mary Curtis be given Narcan and specified the dosage thereof. Nurse Sansome testified that N.P. Socaoco arrived in person to the nursing station while Nurse Sansome was still writing an order. Nurse Sansome never spoke to Dr. Saxena about Mary Curtis. Transcript of Nurse Sansome, APP0335-355.

After Nurse Sansome's deposition, on December 13, 2017, the discovery commissioner ordered LCC to produce incident reports. Finally, on January 4, 2018, LCC served its seventh supplemental disclosure, producing therewith a medication error incident report identifying N.P. Socaoco as the physician/NP notified. Despite holding the incident report, and having served upon Ms. Latrenta at least eight disclosure statements prior to January 4, 2018, LCC never previously identified N.P. Socaoco as a witness or a person of interest in Mary Curtis' care. In fact, no disclosure statement of any Defendant had identified N.P. Socaoco.

Upon the discovery of N.P. Socaoco's involvement and less than two years after the death of Mary Curtis, Ms. Latrenta filed a Motion to Amend Complaint on January 17, 2018 to add the following newly discovered defendants: Annabelle Socaoco, N.P., and employers, IPC Healthcare, Inc. aka The Hospitalist Company, Inc., Inpatient Consultants of Nevada, Inc., IPC Healthcare Services Of Nevada, Inc., Hospitalists of Nevada, Inc. (again, collectively referred to as "IPC" or "Respondents"). APP0171-187.

Dr. Saxena opposed Ms. Latrenta's Motion to Amend Complaint, and on February 6, 2018 moved for summary judgment, arguing that the statute of limitations defeated Ms. Latrenta's claims both against him and against IPC. However, on April 12, 2018, the district court granted Ms. Latrenta's Motion to Amend to pursue her wrongful death claims and medical malpractice claims against

IPC, granted Dr. Saxena's Countermotion for Summary Judgment as to Ms. Latrenta's first cause of action for abuse/neglect of an older person, and denied without prejudice Dr. Saxena's Countermotion for Summary Judgment as to the statute of limitations issue. APP0188-192. Therefore, on May 1, 2018, Respondents were added as defendants.

On June 12, 2018, IPC filed a Motion to Dismiss, or in the Alternative, for Summary Judgment, regurgitating the arguments and evidence that failed to secure Dr. Saxena summary judgment on Ms. Latrenta's wrongful death and medical malpractice claims a few months prior. The district court held a hearing on the IPC Motion to Dismiss, or, in the Alternative, for Summary Judgment on August 1, 2018 and denied the motion.

On November 7, 2018, IPC filed the Notice of Entry of Order Granting In Part and Denying In Part IPC's Motion to Dismiss, Or, In the Alterative, For Summary Judgment. That is, the district court granted IPC's Motion as to Plaintiffs' First Cause of Action for Abuse/Neglect of an Older Person, dismissing that claim, but denying IPC's Motion to Dismiss based upon the statute of limitations. The district court found that the date of inquiry as to the identity of IPC was a question of fact. The district court specifically stated:

> 8. The statute of limitations accrual date is a question of law only if the facts are uncontroverted. *Winn v. Sunrise Hospital and Medical Center*, 128 Nev. 246, 252-253 (2012) (citing *Day v. Zubel*, 112 Nev. 972, 977 (1996)).

> 9. The Court FINDS a question of fact remains as to the date of inquiry as to the identity of the IPC Defendants in this matter.

APP0358.

On November 26, 2018, Respondents filed a Motion for Reconsideration. APP0320-0344. Ms. Latrenta filed an Opposition on December 6, 2018. APP0386-393.

On January 9, 2019, the new acting judge in the case (the case having been administratively reassigned) entered Court Minutes denying IPC's motion for reconsideration, which the new acting judge erroneously called "Plaintiff's [sic] Motion for Reconsideration of the Court's ruling Granting Defendants Summary Judgement" because the previous Order was not clearly erroneous and "Plaintiff [sic] did not argue any new facts or law and did not introduce any substantially different evidence." APP0394-395.

On February 27, 2019, the district court filed an Order to Strike the Court Minutes on IPC's Motion for Reconsideration. On that same day, the district court, without oral argument, entered an Order granting IPC's motion for reconsideration. In this Order, the district court ruled that the case against IPC was barred by the statute of limitations and ordered the case dismissed with prejudice. On April 25, 2019, IPC filed the Notice of Entry of Order Granting IPC Defendants' motion for reconsideration.

Contrary to the prior judge's findings, the new acting judge found that, the pertinent facts were uncontroverted as a matter of law, finding that:

* * * *

> 22. The pertinent facts in this case are uncontroverted as a matter of law.
>
> * * *
>
> 24. Plaintiffs were on inquiry notice no later than March 11, 2016, the date of Mary Curtis's death, because Plaintiffs admitted that providers of health care at Sunrise Hospital told her negligent conduct occurred.
> 25. Moreover, Plaintiffs were on inquiry notice against IPC Defendants at the same time that Plaintiffs were on inquiry notice as related to Life Care Defendants given Plaintiffs' aforementioned arguments in support of their Motion to Consolidate.
> 26. Plaintiffs' argument is without merit regarding the position that the statute of limitations was tolled until Plaintiffs learned the identity of IPC Defendants…
>
> * * *
>
> c. Plaintiffs knew of the purportedly negligent conduct even if Plaintiffs did not know the specific identities of each provider of health care.
> d. Plaintiffs were in possession of medical records which contained the names of some of the IPC Defendants.
>
> * * * *

APP0409.

On April 29, 2019, Ms. Latrenta filed a motion for reconsideration of the Order Granting IPC's motion for reconsideration requesting the district court to reconsider and amend its order granting IPC's motion for reconsideration because (1) the district court failed to acknowledge controlling case law interpreting NRS

41A.097; (2) the district court erroneously employed an analysis applicable not to discovery date but to injury date; (3) the twin *Siragusa*/*Spitler* decisions require that a jury decide whether Ms. Latrenta acted with reasonable diligence in discovering N.P. Socaoco's identity; and (4) Ms. Latrenta's original complaint included Doe Defendants.

On June 5, 2019, the district court held a hearing on Ms. Latrenta's motion for reconsideration. Shortly thereafter, on June 26, 2019, entered its Order Denying Ms. Latrenta's Motion to Reconsider because the district court ironically found that Ms. Latrenta's Motion to Reconsider did not provide a clear error of law present in the district court's Order entered on April 25, 2019. On June 27, 2019, IPC filed the Notice of Entry of Order Denying Plaintiff's Motion to Reconsider. APP0414-419. On July 1, 2019, Ms. Latrenta filed her Notice of Appeal of the Order Granting IPC's motion for reconsideration. APP420-422. This appeal follows.

SUMMARY OF ARGUMENT

It is Ms. Latrenta's position that the lower court erred in first reconsidering IPC's motion for dismissal/summary judgment, and then subsequently dismissing Ms. Latrenta's claims against Respondents on statute of limitations grounds. This Court should therefore vacate the district court's order, with directions to deny IPC's motion to reconsider. Her position rests upon four grounds: First, in moving for

reconsideration IPC pointed to no clear error in the previous district court order denying dismissal, but rather simply re-argued its case on the matter. As such, no reconsideration should have even occurred. Second, the date of inquiry notice is ordinarily a jury question, and mere comment by an unknown member of a hospital staff on March 11, 2016 does not constitute irrefutable evidence of notice such that the question is no longer one of fact for the jury. Third, the question of inquiry notice extends not only to the issue of actionable damage, but also to the identity of the potential tortfeasor. Fourth, a name and signature on the key document in this case was so illegible and placed in such a circumstance that it was a matter for the jury to determine whether the document provided inquiry notice as to the identity of IPC as the potential tortfeasor.

LEGAL ANALYSIS AND ARGUMENT

This Court normally reviews a ruling on a motion for reconsideration for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1197 (Nev. 2010). However, reconsideration in this instance resulted in dismissal of Ms. Latrenta's action against IPC, and turned upon findings of fact, so the appropriate standard of review is that of summary judgment. The Nevada Supreme Court reviews a summary judgment order *de novo*. *Winn v. Sunrise Hosp. & Medical Center*, 277 P.3d 458, 459 (Nev. 2012) (*citing Wood v. Safeway, Inc.*, 121 P.3d 1026,

1029 (Nev. 2005); *Butler ex rel. Biller v. Bayer*, 168 P.3d 1055, 1061 (Nev. 2007) (*citing Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82, 87 (Nev. 2002)).

Summary judgment should only be granted by a district court when, after reviewing the pleadings and discovery on file, and viewing them in a light ***most favorable to the nonmoving party***, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NEV.R.CIV.P. 56(c); *see also Lee v. GNLV Corp.*, 22 P.3d 209, 211 (Nev. 2001) (*citing Butler v. Bogdanovich*, 705 P.2d 662, 663 (Nev. 1985)). A genuine issue of material fact exists where the evidence is such that a reasonable jury ***could*** return a verdict for the nonmoving party. *Valley Bank of Nevada v. Marble*, 775 P.2d 1278, 1279 (Nev. 1989).

I. IPC offered insufficient grounds for the lower court to reconsider its prior rulings on the application of the Discovery Rule to the statute of limitations in this case.[3]

Can it be that a disappointed movant in Nevada can move for reconsideration of an order, based upon the simple assertion that a clear error occurred in the (multiple) prior rulings? While motions to reconsider present no jurisdictional impediments—given that denied motions to dismiss are interlocutory—such motions obviously present a threat to the finality and tranquility of orders and

[3] This argument was preserved below (*See e.g.*, APP0347-0348).

judgments in general. As such, they are disfavored and should only be granted for good cause. *C.f. Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605, 2617 (2008) (A motion to alter or amend "'may not be used to re-litigate old matters'") (quoting 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2810.1, pp. 127-128 (2d ed.1995)). Typically, to succeed on a motion to reconsider, a party must set forth facts or law of a ***strongly convincing*** nature in order to induce a court to review its prior decision. "A motion to reconsider must provide a court with valid grounds for reconsideration by: (1) showing some valid reason why the court should reconsider its prior decision, and (2) setting forth facts or law of a ***strongly convincing*** nature to persuade the court to reverse its prior decision." *Frasure v. U.S.*, 256 F.Supp.2d 1180, 1183 (D.Nev. 2003) (emphasis added); *see also Kern-Tulare Water District v. City of Bakersfield*, 634 F.Supp. 656, 665 (E.D.Cal.1986) (aff'd in part and rev'd in part on other grounds); *Wolde-Giorgis v. Gensen*, 2007 WL 9724057 *1 (D.Az. 2007) ("The court has discretion to reconsider and vacate a prior order. * * * To succeed, a party must set forth facts or law of a ***strongly convincing*** nature to induce the court to reverse its prior decision." (emphasis added)); *BP Products North America Inc. v. Super Stop No. 701, Inc.*, 2010 WL 1049234 *1 (S.D.Fl. 2010) (On motion to reconsider and dismiss for improper venue, "[a] motion for reconsideration is not intended to be a tool for relitigating what a court has already decided."); *Reyher v. Equitable Life Assur. Soc. of U.S.*, 900 F.Supp. 428, 430

(M.D.Fl. 1995) (By failing to set forth facts or law of a "strongly convincing nature," movant offered no ground to justify reconsideration.). Nor is the purpose of reconsideration to allow a new acting District Judge to sit as an appellate court for the twice stated decision of a predecessor of equal jurisdiction simply because of an administrative reassignment of cases to facilitate full calendars for new judges.

A motion to reconsider does not exist to provide the movant with another bite at the apple nor should it be an opportunity for the disappointed party to critique and deconstruct the trial court's earlier orders. The overwhelming consensus is that a motion to reconsider exists to facilitate a second review given "'an intervening ***change of controlling law***, the availability of ***new evidence***, or the need to correct a ***clear error or prevent manifest injustice***.'" *Virgin Atlantic Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2nd Cir. 1992) (emphasis added) (citing 18 C. Wright, A. Miller & E. Cooper,

Federal Practice & Procedure § 4478 at 790.).

IPC exhibited none of these factors in their instant motion. Rather, IPC merely argued that the previous judge in the trial court got its earlier rulings wrong. It did so by making three general arguments: First, it argued that the trial court was clearly wrong in not previously finding that Ms. Latrenta discovered IPC's involvement as early as March 11, 2016, when upon that date an unknown hospital staff member ***commented*** that Mary Curtis should have been sent to the hospital

sooner. Second, IPC argued that the trial court was clearly wrong in not ignoring the precedent of *Siragusa v. Brown*, 971 P.2d 801 (Nev. 1998). "[S]hould a twenty year old case concerning intentional torts control the statute of limitations analysis in the present professional negligence case or should recent, binding Nevada precedent along with particular statutes specifically addressing professional negligence control? Plaintiffs argue the former. IPC Defendants argue the latter." APP0372. Third, IPC argued that it was clear error for the trial court to consider the statute of limitations tolled for concealment when IPC had nothing to do with the difficulties "obtaining information from Life Care," and, as the *Winn* Court held, "one defendant's concealment cannot serve as a basis for tolling NRS 41A.097(2)'s statutory limitation periods as to defendants who played no role in the concealment." APP0374; *Winn*, 277 P.3d at 466.

This last point can be dismissed out of hand, with regard to clear error assigned to the previous district court order. The earlier court order had in no way been premised upon tolling for concealment. Indeed, any question of LCC's recalcitrance in turning over information that would have led to discovery of IPC goes to the question of reasonable diligence exercised by the plaintiff, not to tolling for concealment. It cannot be clear error to identify a holding in a court's decision that does not actually exist.

IPC's first two assignments of clear error in the motion for reconsideration arguably dovetail. Even if Ms. Latrenta knew as of March 11, 2016 that someone had been negligent in not sending Mary Curtis to the hospital sooner, the real question is whether the trial court clearly erred in determining that it was a question of fact as to whether reasonable diligence was exercised by Ms. Latrenta in determining the identity of this particular tortfeasor. IPC argued that it was clearly erroneous for the trial court to consider the latter a material question. In order to make this argument, IPC had to call upon the district court to disregard or distinguish *Siragusa*. An argument premised upon the overruling or the supersession of precedent, without a citation to subsequent precedent on this exact point, is not an argument ***pointing to clear error***. To the contrary, it is an argument that implicitly concedes the legal plausibility of the earlier ruling, but argues for a distinction. IPC had no basis to move for reconsideration. This Court should vacate the lower court's April 25, 2019 Order (dismissing Ms. Latrenta's action against IPC) and June 26, 2019 Order (denying Ms. Latrenta reconsideration), and return the case below with instructions to deny IPC's November 26, 2018 Motion for Reconsideration.

II. Laura Latrenta was not on inquiry notice as a matter of law, regarding the conduct giving rise to a claim of negligence against Dr. Saxena, until at least April 14, 2016.[4]

> [A]n action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.

NRS 41A.097(2). "The appropriate accrual date for the statute of limitations is a question of law only if the facts are uncontroverted." *Winn*, 277 P.3d at 463.

To establish that March 11, 2016 was the incontrovertible accrual date, IPC and the lower court relied solely on the following testimony from Ms. Latrenta at deposition, referring to the date March 8, 2016 and Mary Curtis's admission to the hospital:

> **Q.** Okay. Did they tell you any kind of diagnosis of what they thought was· going on with your mother?
> **A.** They -- one gentleman said to me, and. I think it was on the second day, that because we became – I know them. I started, you know, Oh, where do you live? And he says, You know what, they should have brought her here as soon as this happened, and we could have put her on a Narcan drip.
> **Q.** Okay.
> **A.** They said that to me.
> **Q.** And do you know who that· individual was?
> **A.** I think his name was Jason.

(Transcript of Ms. Latrenta, APP0378-379) That's it.

[4] This argument was preserved below (*See e.g.*, APP0242).

In contrast, Ms. Latrenta put on evidence of her communications with the medical examiner who completed the death certificate. This communication occurred on either April 14 or April 15 of 2016, with the Complaint against Dr. Saxena being filed on April 14 of 2017. The certificate itself was filed on April 18, 2016.

The idea that, as a matter of law, "Jason's diagnosis" put Ms. Latrenta on inquiry notice is outlandish, particularly given this Court's precedent in, 277 P.3d 458. *Winn* establishes that even the occurrence of personal injury in highly suspect medical circumstances is insufficient to establish inquiry notice incontrovertibly. In *Winn*, the daughter of the plaintiff suffered a traumatic brain injury, which occurred paradoxically during a relatively routine heart operation; yet, knowledge of this circumstance alone was insufficient to constitute inquiry notice as a matter of law. Only on the date at which the plaintiff received the complete set of medical records could a Nevada trial court determine that the plaintiff was on inquiry notice as a matter of law. *Id.* at 463.

This Court in *Winn* opined extensively on the question of inquiry notice:

> While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that "would lead an ordinarily prudent person to investigate the matter further." *Black's Law Dictionary* 1165 (9th ed. 2009). We reiterated in *Massey* that these facts need not pertain to precise legal theories the plaintiff may ultimately pursue, but merely to the plaintiff's general belief that someone's negligence may ***have caused*** his or her ***injury***.

Id. at 462 (emphasis added).

It is not reasonable to expect a person to be on inquiry notice as a matter of law before proper notice of the injury and causation. Here, Ms. Latrenta could not possibly have been placed on notice of the negligence in question until she was on notice of the damages from the morphine overdose, *i.e.*, the information provided by the medical examiner. Ms. Latrenta is suing for wrongful death among other things. Whether or not Mary Curtis ought to have been sent to the hospital earlier, in order to treat her for a morphine overdose, would have been relevant to nothing, if the medical examiner had concluded that she had died of old age or of an unrelated heart attack. Moreover, it is not reasonable to expect a person to be incontrovertibly on notice based upon a hospital staff member's off-hand comment as to procedure. Therefore, the lower court's Order—to the effect that "Plaintiffs were on inquiry notice no later than March 11, 2016, the date of Mary Curtis's death, because Plaintiffs admitted that providers of health care at Sunrise Hospital told her negligent conduct occurred"—must be reversed and this question of fact left for a jury.

III. Inquiry notice in the case against IPC, *i.e.*, discovery of the "injury," as understood pursuant to NRS 41A.097(2), encompassed discovery of the identity of IPC as the tortfeasor.[5]

> We hold that "injury" as used in NRS 41A.097(1) means legal injury.

[5] This argument was preserved below (*See e.g.*, APP0389-391).

* * *

> Having decided that "injury" means legal injury, we now determine when the patient "discovers" her legal injury.
>
> * * *
>
> The discovery may be either actual or presumptive, but must be of both ***the fact of damage*** suffered ***and*** the realization that the cause was ***the health care provider***'s negligence.

Massey v. Litton, 669 P.2d 248, 251 (Nev. 1983) (emphasis added).[6]

That the identity of the tortfeasor is a necessary element to establish inquiry notice is borne out by this Court's holdings in *Siragusa v. Brown*, 971 P.2d 801. In *Siragusa*, the plaintiff filed a complaint against her former spouse and his medical practice partners for fraud. The plaintiff later discovered facts suggesting that the former spouse's attorney's involvement in the same fraud. The defendant-attorney argued that the statute of limitations had already run, contending that discovery of the facts initially making out fraud applied to the defendant-attorney as well. The trial court agreed and granted summary judgment. However, this Court disagreed, holding that the plaintiff's date of discovery of an actionable injury ***as to the defendant-attorney*** only occurred with knowledge that the attorney was involved.

> By May 1989, [plaintiff] was aware that [husband's medical practice partners] had concocted a "sham" transfer of [husband's] interests so as to protect those medical practice assets from [plaintiff's] lien and from being included in the bankruptcy

[6] There is no cause to interpret injury under NRS 41A.097(2) from that of NRS 41A.097(1).

> estate. However, we conclude that such awareness did not, as a matter of law, constitute discovery by [plaintiff] of facts constituting the fraud allegedly perpetrated by [husband's attorney].

Id. at 806.

This Court explained that its holding was supported by considerations of fairness and public policy.

> The public policy justifying the accrual of a cause of action upon the discovery of the injury and its cause ***applies equally to the discovery of the identity of the defendant*** in this case. We have consistently recognized the injustice of commencing the statute of limitations before a claimant is aware of ***all the elements of an enforceable claim***. ***A statute of limitations barring relief to victims before the defendant is, or could be discovered violates this guarantee of fairness.***

Id. at 807 (emphasis added).

IPC responded to this citation in the court below by arguing that *Siragusa* should not control; rather, it argued that statutes particularly addressing professional negligence and enacted more recently than entry of the *Siragusa* decision should control. The fatal flaw in IPC's reasoning is that no statute overrules, impinges upon, or otherwise distinguishes *Siragusa* with regard to discovery of identity.

In its motion for reconsideration, IPC specifically pointed to language in NRS 41.071 to the effect that a tortfeasor may be described by conduct in lieu of identification by name. However, NRS 41.071 is overtly directed to the necessity and sufficiency of the medical expert affidavit required for filing a professional

negligence action. That that statute permits the affidavit to describe the conduct in lieu of identity demonstrates nothing. The fact is, given the sole purpose of such an affidavit to forestall legally frivolous lawsuits based upon insufficient clinical grounds, such a provision to permit description by conduct is necessary. This statute simply does not pertain to the Discovery Rule.

When the Nevada legislature enacts a statute, this Court presumes that it does so with full knowledge of existing statutes related to the same subject. *City of Sparks v. Reno Newspapers, Inc.*, 399 P.3d 352, 356 (Nev. 2017). This Court should similarly presume that the legislature does so with full knowledge of long standing precedent related to the same subject. IPC's implicit position is that, with regard to medical negligence cases at least, with passage of NRS 41.A.071 the legislature intended to overturn this Court's holding that discovery of "injury" includes discovery of the identity of the tortfeasor. Contrary to IPC's favored analysis however, this Court presumes that the legislature does not intend to overturn established law unless the statutory text explicitly so states, or is necessarily implied by the statutory language. *Hardy Companies, Inc. v. SNMARK, LLC*, 245 P.3d 1149, 1155-1156 (Nev. 2010).

In part because *Siragusa* still controls, discovery of the identity of IPC as the tortfeasor is still an element of discovery of the injury pursuant to NRS 41A.097(2). Therefore, to the extent that the lower court's ultimate conclusion and order was

based upon a legal conclusion to the effect that Ms. Latrenta's ignorance as to the identity of IPC was immaterial to the accrual date; such an ultimate conclusion was in error. This Court must reverse.

IV. Discovery of the identity of IPC as a tortfeasor was a matter for the jury, as the presence of Nurse Practitioner Socaoco's illegible name on the post-acute progress note was not incontrovertible evidence of inquiry notice as to the IPC defendants as tortfeasors.[7]

> [T]he question of when a claimant discovered or should have discovered the facts constituting a cause of action is one of fact. Only where uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim should such a determination be made as a matter of law.

Siragusa, 971 P.2d at 812 (citations omitted). "Whether [plaintiffs] exercised reasonable diligence in discovering their cause of action is a question of fact [to] be determined by the trier of fact." *Bemis v. Estate of Bemis*, 967 P.2d 437, 441 (Nev. 1998).

The lower court found that Ms. Latrenta was "in possession of medical records which contained the names of some of the IPC Defendants." These refer to the documents regarding the measures taken at the LCC nursing home following the morphine overdose. Specifically, they refer to the post-acute progress note referencing the administration of Narcan, appearing as it did with an apparent physician's prescription for such. The attending physician listed with the

[7] This argument was preserved below (*See e.g.*, APP0247).

prescription was Dr. Saxena, who of course was sued on April 14, 2017. Scrawled at the bottom of the post-acute progress note detailing the Narcan administration and directive to monitor Mary Curtis was a signature and printed name. Of these, only the printed letter "S" is reasonably legible in the signature and printed name, or at least a jury could so find.

It was reasonable for Ms. Latrenta to believe that this name referred to Dr. Saxena. In reality, this name referred to N.P. Socaoco, an employee of an IPC corporate defendant, and a person unknown to Ms. Latrenta until deposition of LCC employee Nurse Samsone on December 6, 2017. Nonetheless, the lower court charged Ms. Latrenta with inquiry notice as to N.P. Socaoco's involvement in Mary Curtis's injury and, by extension, inquiry notice of N.P. Socaoco's employer, the IPC corporate defendants, thereby taking the question of inquiry notice away from a jury. This was error. Again, the lower court erred as a matter of law in dismissing this case, and must be reversed.

CONCLUSION

It is Ms. Latrenta's position that the lower court erred in dismissing the Complaint, and this Court should order reinstatement. IPC did not point to any clear errors in the earlier court order denying dismissal of claims, and so IPC's Motion for Reconsideration should not have even been entertained. Discovery of the claims against IPC, pursuant to N.R.S. 41A.097 as construed by *Siragusa v. Brown*, 971

P.2d 801, does not occur until discovery of the identity of IPC as a tortfeasor. It was a matter for the jury to find as a fact when discovery of IPC's identity occurred, and it is specifically a matter for the jury to find as a fact whether an illegible name of an IPC employee on a document eventually in Ms. Latrenta's possession constituted inquiry notice. The lower court erred as a matter of law in dismissing this case pursuant to N.R.S. 41A.097, and Appellant prays this Court reverse and, or in the alternative, vacate the lower court's order with directions to send this matter to a jury.

RESPECTFULLY SUBMITTED this 6th day of November, 2019.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 5,719 words.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying

brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of November, 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I certify that I am an employee of Kolesar & Leatham and on the 6th day of November, 2019, I submitted the foregoing ***Plaintiffs'/Appellants' Opening Brief*** to the Supreme Court of Nevada's electronic docket for filing and service upon the following:

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