Civil Bench Bar Summaries

1. Falconi
2. The antislapp case

9¡ Valley.Health.Sys¡?LLC.v¡.Murray.

a. Hospitals owe no fiduciary duty to their patients in connection with medical treatment. Without the patient demonstrating more in a particular instance, the relationship between an emergency-room provider and a patient does not exhibit the degree of trust or confidence exceeding that of a routine business relationship in which parties must exercise simply reasonable care for each other. Recognizing a claim for breach of fiduciary duty against a hospital in relation to a patient's medical care would be duplicative, and improper, where the allegation boils down to one of medical malpractice by the hospital. Separately, the Supreme Court emphasized that prejudgment interest cannot be awarded on future damages, and "[i]t is error to award prejudgment interest for the entire verdict when it cannot be determined what part of the verdict represents past damages." Valley.Health.Sys¡?LLC.v¡.Murray, 140 Nev. Adv. Op. No. 14, ___ P.3d ___ (March 14, 2024).

0¡ Sunrise.Hosp¡.v¡.Eighth.Jud¡.Dist¡.Ct¡.

a. 1) This opinion addresses the privilege created by the federal Patient Safety and Quality Improvement Act of 2005 (PSQIA), 42 U.S.C. §§ 299b-21-299b-26, that applies to information that qualifies as patient safety work product; and (2) under the PSQIA, identifiable patient safety work product is privileged from discovery in civil proceedings, and the privilege cannot be waived. The PSQIA provides that "patient safety work product shall be privileged and shall not be ... subject to discovery ... [or] admitted as evidence in any Federal, State, or local governmental civil proceeding." Patient safety work product comes in two categories: identifiable and nonidentifiable. This opinion concerns the privilege regarding identifiable patient safety work product. There are only a few exceptions to PSQIA privilege for identifiable patient safety work product: in certain criminal proceedings, in civil actions brought by a good-faith reporter, or when every medical provider identified in the work product authorizes disclosure. None of those exceptions apply here. The district court found that a hospital could waive the PSQIA's grant of privilege over patient safety work product; however, it erred in doing so by abusing the negative-implication canon to create a necessary condition for privilege where none exists in the PSQIA's implementing regulation. The regulation, 42 C.F.R. § 3.208, states that patient safety work product disclosed in accordance with 42 C.F.R. § 3.204(b)(1) or disclosed impermissibly shall remain privileged. The district court interpreted this regulation to mean that patient safety work product disclosed permissibly shall not remain privileged. This incorrect maneuver was logically

invalid. The plain language of the regulation describes when patient safety work product continues to remain privileged. It does not purport to describe when patient safety work product shall be excepted from privilege, as the implementing regulations cover those exceptions in a different section. The negative-implication canon should not be applied to 42 C.F.R. § 3.208 because it creates an exception to privilege far broader than the exceptions to privilege explicitly carved out elsewhere in the PSQIA and implementing regulations. The Supreme Court determined that the PSQIA privilege is absolute. Federal courts tasked with determining whether PSQIA privilege extends over alleged patient safety work product ask two questions. The only factors bearing on whether identifiable patient safety work product may be privileged under the PSQIA are (1) whether the materials were created for the purpose of reporting to a patient safety organization and (2) whether they were so reported. If they are so privileged, then courts must consider whether one of the exceptions made explicit by 42 C.F.R. § 3.204(b) applies. Because the PSQIA does not contemplate waiver of the privilege over identifiable patient safety work product, such a privilege cannot be waived. Sunrise Hosp. v. Eighth Jud. Dist. Ct., 140 Nev. Adv. Op. No. 12, ___ P.3d ___ (March 7, 2024).

5. Lamont's Wild w Buffalo v. Terry
    a. **While a movant must comply with NRCP 11(c)(2) requirements for the district court to impose sanctions under Rule 11, those requirements do not apply to independent sanctioning mechanisms such as NRS 18.010(2)(b) and NRS 7.085.** Under NRCP 11, parties certify through their signature that papers presented to the court are, to the best of the party's belief and knowledge, not presented for an improper purpose and not unwarranted or frivolous, and that factual assertions and denials are supported and warranted by evidence. If a party files papers for an improper purpose or frivolously engages in litigation, that party may be sanctioned under NRCP 11(c). The movant seeking sanctions must comply with the rule's procedural requirements, commonly referred to as the safe-harbor provision. The provision requires the movant to file its motion for sanctions "separate from any other motion," and the motion "must not be filed ... if the challenged paper ... is withdrawn or appropriately corrected within 21 days after service." The prevailing party may then be awarded "reasonable expenses, including attorney fees, incurred for presenting or opposing the motion." Here, the Supreme Court had to determine whether procedural requirements in NRCP 11(c)(2) apply to NRS 18.010 and NRS 7.085. NRS 18.010(2)(b) provides for the recovery of attorney fees "when the court finds that the claim, counterclaim, or third-party complaint or defense of

the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." NRS 7.085 provides for recovery of attorney fees, from the offending attorney personally, when "an attorney has filed, maintained, or defended a civil action ... not well-grounded in fact .. . or unreasonably and vexatiously extended a civil action." Both statutes state that "[i]t is the intent of the legislature that the court award costs, expenses, and attorney's fees pursuant to this [statute] and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations." NRCP 11 does not supersede NRS 7.085. NRCP 11 and NRS 7.085 are "distinct, independent mechanism[s] for sanctioning attorney misconduct" because they apply to different types of misconduct. The same is true of NRCP 11 and NRS 18.010(2)(b); each is a distinct sanctioning mechanism. The Legislature chose not to incorporate a safe-harbor provision similar to NRCP 11 in either NRS 18.010(2)(b) or NRS 7.085. Thus, the district court erred in applying the procedural bar in NRCP 11(c)(2) to NRS 18.010 and NRS 7.085. ***LaMont's Wild W. Buffalo, LLC v. Terry,*** 140 Nev. Adv. Op. No. 11, ___ P.3d ___ (March 7, 2024).

6. Posner
    a. Instituting judicial foreclosure proceedings does not trigger the 10-year time frame in NRS 106.240. NRS 106.240 provides that certain liens on real property are automatically cleared from the public records after a specified period of time. More precisely, the statute provides that a lien that is created by a mortgage or deed of trust on real property is conclusively presumed to be discharged "10 years after the debt secured by the mortgage or deed of trust according to the terms thereof or any recorded written extension thereof become wholly due." The Supreme Court of Nevada held in LV Debt Collect, LLC v. Bank of New York Mellon, 139 Nev., Adv. Op. 25, 534 P.3d 693 (2023), that recording a notice of default to institute nonjudicial foreclosure proceedings does not trigger NRS 106.240's 10-year time frame. In this opinion, and for reasons similar to those in LV Debt Collect, the Court clarified that instituting judicial foreclosure proceedings likewise does not trigger the 10-year time frame. This conclusion is consistent with policy considerations set forth in LV Debt Collect, in that applying NRS 106.240 to security interests that are the subject of pending litigation would be "incongruous with the statute's purpose" and would encourage property owners to "engage in run-out-the-clock gamesmanship" by prolonging a judicial foreclosure action until NRS 106.240's 10-year period expires. **Posner v. U.S. Bank Nat'l Ass'n**, 140 Nev. Adv. Op. No. 22, ___ P.3d ___ (April 4, 2024).