No. 21-805

In the Supreme Court of the United States

DOUGLAS NORBERG,

Petitioner,

v.

NEVADA CENTER FOR DERMATOLOGY; ASHLEY VAZEEN; AND DR. BILLIE CASSE,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada

PETITION FOR A WRIT OF CERTIORARI

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NOVEMBER 24, 2021
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QUESTIONS PRESENTED

1. Is Nevada Supreme Court Rule 36 allowing appellate decisions to be unpublished and unable to the cited as precedent a violation of the rule of *stare decisis* and of the common law?

2. Is the miscitation and sophism used in the dismissal for failure to state a cause of action upon which relief may be based in the case of *Norberg v. Nevada Center for Dermatology, Vazeen and Casse* a paradigm of why appellate court cases need to be published and cited as precedent?

LIST OF PROCEEDINGS

Supreme Court of the State of Nevada

Case No.: 82083

Douglas Norberg v. Nevada Center for Dermatology, Ashley Vazeen and Dr. Billie Casse

Date of Opinion: September 24, 2021

Court of Appeals of the State of Nevada

Case No.: 82083-COA

Douglas Norberg v. Nevada Center for Dermatology, Ashley Vazeen and Dr. Billie Casse

Date of Final Order: July 16, 2021

Second Judicial District Court of the State of Nevada

Case No.: CV20-01218

Douglas Norberg v. Nevada Center for Dermatology, Ashley Vazeen and Dr. Billie Casse

Date of Final Order: October 20, 2020

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OPINIONS BELOW

The Order of the Supreme Court of the State of Nevada, dated September 24, 2021, is reproduced in the appendix to this petition at App.1a. The Order of the Court of Appeal of the State of Nevada, dated July 16, 2021, is unpublished and is reproduced in the appendix at App.4a. The Order of the Second Judicial District Court of the State of Nevada Granting the Defendants' Motion to Dismiss, dated October 20, 2020, is reproduced in the appendix at App.17a.

JURISDICTION

The Order of the Supreme Court of the State of Nevada was entered on September 24, 2021. (App.1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS, JUDICIAL RULES, AND CODES INVOLVED

Following statutory provisions are included in the appendix to this petition:

- NRS § 41A.071 (App.36a)
- NRS § 449A.112 (App.36a)
- Nev. R. App. P. 36 (App.38a)

- Code of Medical Ethics Opinion 3.1.1 (App.42a)
- Code of Medical Ethics Opinion 3.1.2 (App.43a)

STATEMENT OF FACTS

In late September 2018, Nurse Practitioner Vazeen excised what I thought was a blackhead and a skin tag in my pubic hair. Her female medical assistant or scribe sat to one side. At the end of the treatment Nurse Practitioner said, "I want to give you a full body skin examination." I had never heard of such a thing but I had a couple of friends who had had skin cancer so I agreed.

In the interim I researched what a full body skin examination entailed. My research said in a video, "If your dermatologist doesn't ask you to get naked, find another dermatologist." I should have taken that advice. I had sent NP Vazeen the publication, "Finding Melanoma Early", from the Melanoma Education Foundation in a letter dated, 11/12/2018. It says in an annotation, "It's highly recommended you have your entire body examined; melanomas can appear in area that are never exposed to the skin." (App.74a)

On December 6, 2018, the exam took place. The first thing that NP Vazeen said was, "Has anything changed since the last exam?" I replied that I had little black spots all over my scrotum." She then examined me and correctly diagnosed Angiokeratoma of Fordyce, a harmless skin condition. At the end of the exam she gave me a publication on that condition. I believe that the scribe was out of the examination room during

the examination to obtain that publication. I don't recall her being present.

When I arrived home I realized that I had never taken off my underpants and therefore the full body skin examination had been incomplete. Since I was scheduled to have some spots on my face frozen on December 7, 2018, before that took place I raised the issue of incompleteness. Pursuant to my research I would have had to change dermatologists and I didn't want to change dermatologists. A mistake I now regret. I liked Nurse Vazeen. She cured me! NP Vazeen and her scribe left the room and came back in about 10 minutes with Dr. Casse' who NP Vazeen introduced. The end of full body skin examination then took place with Dr. Casse' and the scribe sitting at the foot of the examining table while I was laying naked from the waist down.

It does not bother me to be examined by a female medical professional. They are just doing their job and for them it is merely routine. What bothered me was now I had an audience! I started to have an embarrassing physical reaction to the presence of a female audience that I eventually controlled but not before it was noticed. I did not know why the two women were present nor had I given consent. Had I been asked; I would have consented because I was the cause of Dr. Casse' being brought in. Had I consented, the psychology of having given consent would have made the experience feel different. I wouldn't have felt like I was being objectified. My consent also would have precluded me from filing this case. Had I consented, I wouldn't have been left with the feeling that I had been callously humiliated.

When I wrote to the dermatology clinic a couple of months later on March 5, 2019, I asked them, "If you need me as a teaching tool again, please tell me beforehand," and they fired me as a patient. (App.46a) I was outraged and I tried to resolve the question with the Nevada Dermatology Clinic but was unsuccessful. I then filed complaints with all three medical boards for violation of AMA Medical Ethics Opinion 3.1.2 (App.43a) and NRS § 449A.112 (App.36a-37a) but was unsuccessful. In my letter to the Nevada State Board of Nursing I wrote in my last paragraph:

> "I do not request any disciplinary action. My request is simply that the Nevada Center for Dermatology be informed of proper protocols for informing patients when third parties are present and obtaining consent for the use of chaperones." (App.54a)

Had the Nevada State Board of Nursing merely told the Nevada Center for Dermatology to get permission before bringing in observers to modestly sensitive examinations, as required by the definition of consent itself, AMA Ethics Opinion 3.1.2 and NRS § 449A.112 ¶ 2, this case would not have been filed. All I ever wanted was notice before observers are allowed to watch. The purpose of the lawsuit was to stop what in the literature is called "ambush". (App.55a). The use of female chaperones without notice or consent to observe a man's modestly sensitive examinations. The hope was to force the medical profession to take a few extra seconds to ask for consent. I want to stop this patient abuse!

I then complained to the Governor and Attorney General who ignored me. At point I filed this case for Invasion of Privacy, Intrusion upon Seclusion.

The Nevada District Court dismissed the case (App.17a) stating that the Intentional Tort was barred by NRS 41A.071 (App.36a), a malpractice statute of limitations. The decision is ridiculous! Nurse Ashley Vazeen committed no malpractice! First, she cured me, then she correctly diagnosed a case of angiokeratoma of Fordyce and when I asked her to complete an incomplete full body skin examination she complied. The essential elements of misfeasance and damages are completely absent! The difference between an intentional tort and negligence is literally the difference between deliberate and accident. This was no accident!

I then appealed to the Nevada Supreme Court who assigned the case to the Nevada Court of Appeals. The Nevada Court of Appeals affirmed the District Court. (App.4a). I then filed a Petition for Hearing to the Nevada Supreme Court and a Motion for Publication was filed by my opponent. Had it been permissible to join in that motion I would have done so. Both the Petition for Hearing in the Supreme Court and the Motion for Publication were denied. (App.1a & App.3a). This petition is taken from the affirmance by the Nevada Court of Appeals, the denial of the Petition for Hearing in the Nevada Supreme Court and the denial of the Motion for Publication.

The technical issue in this case is the right of privacy and consent thereto. The real issue is patient communication! The purpose of this petition is to stop the practice of hiding appellate decisions by not publishing them and not applying *stare decisis* by not allowing citations thereto. See Nevada Supreme Court Rule 36. (App.38a)

REASONS FOR GRANTING THE PETITION

I. THE CASE OF *NORBERG V. NEVADA CENTER FOR DERMATOLOGY ET AL* IS A VIOLATION OF THE CONSTITUTIONAL RIGHT OF PRIVACY.

The right of privacy is guaranteed in the Constitution of the United States. *E.g.*, *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Roe v. Wade*, 410 U.S. 113 (1973). The 13th Amendment to the Constitution of the United States also guarantees to everyone the right of ownership of one's own body. The right to physical privacy, the right of control over one's own body, is the most important right that can exist! If one does not control the rights over one's own body, no other rights matter. The tort of Violation of Privacy, Intrusion upon Seclusion, at least as it applies to bodily privacy, vindicates that right.

It is axiomatic to the practice of medicine that the medical provider must have consent. A medical provider cannot even touch a patient without consent. For example, if a patient requires blood products for survival but refuses blood products for religious reasons, the medical provider cannot administer blood products. The medical provider cannot violate consent even to save the life of the patient!

By definition, when a patient consents to treatment, he consents to everyone providing treatment. *A fortiori*, if someone is present who is not treating the patient, that person does not have consent.

This is the position of the American Medical Association. AMA Code of Medical Ethics Opinion 3.1.2

entitled Patient Privacy and Outside Observers to the Clinical Encounter states:

> "Individuals legitimately present during patient-physician encounters include those directly involved in the patient's care . . .
>
> When individuals who are not involved in providing care seek to observe patient-physician encounters, e.g. for educational purposes, physicians should safeguard patient privacy by permitting such observers to be present during a clinical encounter only when:
>
> (a) The patient has explicitly agreed to the presence of the observer(s)." (emphasis supplied)

This is also the law of the State of Nevada. NRS § 449A.112 reads in part:

> "1. Every patient of a medical facility or facility for the dependent has the right to:
>
> (a) Receive considerate and respectful care.
>
> 2. The patient must consent to the presence of any person who is not directly involved with the patient's care during any examination, consultation or treatment."

II. THE ELEMENTS OF THE TORT INVASION OF PRIVACY, INTRUSION UPON SECLUSION ARE ALL PRESENT.

The elements of violation of privacy, intrusion upon seclusion are well stated in *PETA v. Berosini*, 111 Nev. 615, 895 P.2d 1269 (1995); Petitioner would note at this time that this tort is broader than what Petitioner urges upon the court. Petitioner only claims

a constitutional right of bodily privacy. All of the elements are present!

1. An intentional intrusion — The three women did not enter accidently.

2. On plaintiff's solitude or seclusion — A patient in an examining room has an expectation of privacy. This is even agreed to by the Court of appeals. *See* Order of Affirmance, App.8a.

3. That would be "highly offensive to a reasonable person".

3.1. "Highly offensive to a reasonable person" is obviously a jury question.

3.2 The legislature of the State of Nevada by passing NRS § 449A.112 has already determined the presence of observers without consent to an "examination, consultation or treatment" to be offensive. How is it possible to conclude that the Petitioner cannot prove "highly offense to a reasonable person" when there is a statute that says otherwise?

3.3. Since when is unnecessary exposure of a patient's genitals to persons of a different gender not offensive? (*See e.g.* App.57a) Best Practices of Sensitive Exams, ACHA (American College Health Association) guidelines.

How does this case differ from *Daily Times v. Graham*, 162 So.2d 474 (1964) where the court applied Invasion of Privacy when the local newspaper took a picture of a woman going through a "fun house" at the county fair showing her dress blown up exposing her panties? *See also Granger v. Klein*, 197 F.Supp.2d

851 (2002) which said that a picture of male genitals in a yearbook could be patently offensive.

There is also a double standard gender discrimination aspect to this case. Change the genders and it would not have happened. No male medical provider is going to bring in two men to observe a woman's pelvic examination. Moreover, if the genders were reversed, it is doubtful I would have lost.

III. THE OPINIONS OF THE NEVADA DISTRICT COURT AND THE NEVADA COURT OF APPEALS ARE CELEBRATIONS OF MISCITATION AND SOPHISM.

The cases cited in favor of applying a malpractice statute of limitations to an intentional tort are *Estate of Curtis v. South Las Vegas Medical Investors, LLC*, 136 Nev. Adv. Op., 39, 466 P.2d 1263 (2020). *Szymborski v. Spring Mountain Treatment Center*, 133 Nev. 638, 403 P.3d 1280 (2017) and *Humboldt Gen. Hosp. v. Sixth Jud. Dist. Ct.*, 376 P.3d 167 (2016). The first two, *Curtis* and *Szymborski*, both hold that in a medical negligence case, the case is not malpractice unless the jury requires an expert. Even if the case at bar was for negligence, it still wouldn't be malpractice because a skin examination does not require an expert for a jury to understand.

The *Humboldt Gen. Hosp.* case holds the same thing except from the opposite point of view. First, it follows the majority rule that informed consent is not battery but negligence. *E.g. Mole v. Jutton*, 381 Md. 27, 846 A.2d 1035 (Md. 2004). Then it holds that since informed consent requires an expert, that negligence is also malpractice and therefore subject to the Malpractice Statute of Limitations. All three cases are

consistent! They all hold that in a medical negligence case it is not malpractice unless the jury needs an expert to explain.

Malpractice is a subset of negligence. If there is no negligence, there can be no malpractice!

The District Court to which the Court of Appeals agrees uses sophisms to justify its decision. The first is the gravamen argument, that this case sounds in malpractice (sic). That because the claim "occurred within the course of a professional relationship" it must be a "professional negligence". (App.22a). The reasoning requires no rebuttal; it is specious on its face. The court also contradicts itself. If the case at bar is malpractice, it can't be an intentional tort. Further analysis is not necessary.

The next sophism is that since nurse Vazeen is allowed pursuant to the Nevada Administrative Code to practice independently in a doctor's office that fact somehow gives consent for observers to be present. Medical consent must be obtained from the patient! The argument is a complete non sequitur.

The last sophism is that what Nurse Vazeen did was "medically reasonable." (App.25a).

1. The court doesn't know what "medical" means. Medicine is about the health of the patient! What do two observers sitting and watching have to do with the health of the patient?

2. So what if the presence of Dr. Casse' was reasonable! What is reasonable is irrelevant. Reasonable doesn't overrule consent! Consent can only be obtained explicitly from conscious, competent patients. NRS § 41A.120, *supra.*

Petitioner was the cause of Dr. Casse' being brought in. This is why Petitioner concluded her presence was reasonable. "Reasonable" was admitted by Petitioner to show the importance of patient communication!

What is "reasonable" favors Petitioner. Why isn't it reasonable to ask before bringing in observers to watch a modesty sensitive examination?

The reasonings used by the Nevada Court of Appeals are erroneous:

1. A supervisor does not automatically have consent to be present.

The Court of Appeals rules in a footnote on App.9a that it is obvious that Dr. Casse' was supervising and therefore she had consent. Who says a supervisor has consent? The reasoning is circular; it assumes the very question disputed! Supervising is not "directly involved with the patient's care" by the very definition the court cites, to-wit, "to oversee". The supervisor is present to "oversee" the work of the supervisee. Overseeing is not participating!

Consent for the purpose of chapter NRS 41A on Professional Malpractice is defined by NRS § 41A.120:

> "Consent of patient: When implied. In addition to the provisions of chapter 129 (Minors' Disabilities) of NRS and any other instances in which a consent is implied or excused by law, a consent to any medical, surgical or dental procedure will be implied if:
>
> 1. In competent medical judgment, the proposed medical, surgical or dental procedure is reasonably necessary and any delay in perform-

ing such a procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm; and

2. A person authorized to consent is not readily available."

I was conscious, competent, readily available and the failure to allow observers to come in and watch would not result in "death, disfigurement, impairment of faculties or serious bodily harm".

2. The Petitioner knew the scribe would be present.

So what! Why is this relevant? Even if Petitioner had specifically agreed to her presence, it was the presence of an audience that he objects to! (App.44a).

A scribe's presence is hardly necessary. A scribe could be outsourced to India. The scribe never transcribed anything! She sat and watched. A scribe is not licensed in Nevada. What is the reason for her presence? What exactly did she do in the examination that "directly involved (her) with the patient's care"?

Does a patient implicitly agree to the presence of a "scribe" by failure to object or did he merely acquiesce to her presence? Is not the patient entitled to trust his medical provider to protect his privacy? AMA Ethical Opinion 3 says: "Patient privacy encompasses a number of aspects, including personal space (physical privacy) . . . " (App.42a). Should the burden be on the patient to defend his privacy from his medical provider? Is this not why AMA Ethics Opinion 3.1.2 requires "explicit consent"?

The argument that Petitioner implicitly agreed to the presence of the scribe would mean that anytime a patient follows directions from his medical provider, he has implicitly agreed. The relationship between a medical provider and a patient is unequal. How is following instructions of one's medical provider consent? The gymnastic victims of Dr. Larry Nasser or the gynecological victims of Dr. George Tyndale did not implicitly consent to their own sexual abuse!

3. In the Order of Affirmance, App.10a, the court says: "[T]he record reveals no other purpose for their presence and show that they were, acting furtherance of his treatment, and Norberg does not point to any evidence or even allege that respondents acted with any motive or purpose beyond that limited scope." The flaws in this reasoning are:

3.1. The reasoning is literally that a negative proves a positive. It is logical nonsense! One cannot conclude anything from a "lack of evidence".

3.2. Since when is it the Petitioner's obligation to show what the motives of the Defendants are?

3.3. The Court of Appeals knows what the reason is! The court contradicts itself in its footnote on App.9a where it says the reason was supervision.

The Court of Appeals actually holds in a footnote on App.11a-12a that an expert witness would be required to testify to the necessity of supervision in a full body skin examination! Really! Just exactly what is difficult for a jury to understand about a skin examination? If Dr. Casse was necessary for super-

vision, why did Nurse Vazeen have to go get her only after I complained?

The purpose of a supervisor is instructional. A supervisor is present to supervise the supervisee! They watch, they do not assist unless they have to. If they do assist they would then be directly involved in the patient's care. One of the things that Petitioner would have shown had the case gone to trial is that hospitals always ask consent for supervisors to observe.

How exactly are two people sitting quietly watching without even getting out of their seats "acting furtherance of his treatment"? What care did they provide to the patient? If they provided no care how can they possibly be "directly involved with the patient's care".

Patient communication is the very heart of this case and something the courts below completely ignored. This is NOT veterinary medicine! Why not take few seconds to ask the patient for consent? Why is that burdensome? What should the default be?

Why is it not "reasonable" to ask for consent? If the patient refuses consent, the medical provider is not required to do the examination. *See e.g.* App.14a.

IV. PETITIONER WAS ENTITLED TO AMEND HIS COMPLAINT TO INCLUDE THE SCRIBE.

I deliberately did not include the scribe in my claim. She is a mere pawn. She is not a medical professional and just does what she is told. I do not think it is necessary to include her because it was Nurse Ashley Vazeen who brought her into the examination without my consent. However, I would have named her if I had to!

The Nevada Court of appeals states on App.15a-16a:

> Finally, Norberg argues in the alternative that he should have been permitted to amend his complaint to add the medical assistant as a defendant. Specifically he claims that she is not a medical professional and that adding her would therefore allow him to circumvent Nevada's medical malpractice statutes. But it does not appeal from the record that Norberg raised this issue or otherwise requested this relied on below and has therefore waived it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal. (citation omitted) ([N]not having requested the court for permission to amend, the appellant will be deemed to have elected to stand on this [pleading] as originally filed.)

The factual predicate for this ruling is false! The appeal that was taken was the first time I had a chance to request an amendment to the pleadings! This case was dismissed upon a Motion for Judgment on the Pleadings. The final paragraph of Order Granting Defendant' Motion to Dismiss for Failure to State a Claim upon Which Relief May be Based says:

> "IT IS HEREBY ORDERED that Defendants Motion to Dismiss for Failure to State a Cause upon Which relief May be Granted is hereby GRANTED. This action is hereby DISMISSED with prejudice and without

leave to amend." (emphasis supplied) (App.35a).

The case cited as controlling, the Old Aztec Mine case, is miscited! It went to trial. It hardly applies to a case that never got past the pleading stage! It is egregiously unfair to deny the Plaintiff the opportunity to amend and then rule against him for not having done so!

V. THE NEVADA SUPREME COURT RULE 36 IS A VIOLATION OF THE RULE OF *STARE DECISIS* INTEGRAL TO THE COMMON LAW AND THUS IS UNCONSTITUTIONAL PURSUANT TO THE 9TH AMENDMENT AND THE DUE PROCESS CLAUSE OF THE 5TH AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

Nevada Supreme Court Rule 36 Entry of Decision

"(c) Form of Decision. The Supreme Court and Court of Appeals decide cases by either published or unpublished disposition.

(1) A published disposition is an opinion designated for publication in the Nevada Reports. The Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;

(B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or

(C) Involves an issue of public importance that has application beyond the parties.

(2) An unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.

(3) [U]npublished dispositions issued by the Court of Appeals may not be cited in any Nevada court for any purpose."

King Henry II is regarded as the father of the common law. When he took the throne there was no national court system in England. The only legal remedy was to go directly to the king or lord of the manor or to an ecclesiastical court. In order to cement his hold on his realm King Henry sent circuit riding judges throughout his realm. When they made their decisions they filed their decisions in the Tower of London. The judges followed the precedent of the previous cases. As time went by a body of law developed based upon precedent that was common to the realm. Hence, the common law. The common law is law by precedent; precedence is the common law. Without precedence the common law would not exist! Precedent is crucial because the law needs to be consistent! There can be exceptions in the law but there cannot be exceptions to the rule of law. Everyone has to obey the law, especially courts. No one is above the law; no one is excepted from protection of the law!

The common law applies in Nevada. NRS § 1.030, "Application of common law in courts. The common law of England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United

States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State."

The Ninth amendment to the Constitution of the United States reads as follows: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Henry II was the father of King John who signed the Magna Carta in 1215. The common law is older than the Magna Carta. It precedes the Constitution of the United States and therefor is a right retained by the people. A person who files a lawsuit anywhere is the United States has a right to expect his case determined by precedent. He has a right to consistency! The Mexican rule of law that the court only has to follow a case when it has ruled the same way three times makes no sense! Since the common law is the legal system of the United States, a violation of the rule of precedent is also a violation of the due process clause of both the 5th and 14th amendments.

Rules which permit the hiding of decisions and forbid citation thereto are inconsistent to the common law and therefor unconstitutional. This is shown by the fact that *Norberg v. Nevada Center for Dermatology* fits two of the criteria of Supreme court Rule 36(c)(1) to-wit, (A) Presents an issue of first impression and (C) Involves an issue of public importance that has application beyond the parties. This case, if published and followed, would eviscerate an entire chapter of NRS to-wit, Chapter 449A, The Care and Rights of Patients. It clearly involves an issue of public importance. Rule 36 is being used to decide cases wrong, hide them by not publishing them and then forbidding their citation.

This is not the first time that I have been victimized by the failure of the Nevada Supreme Court to publish. Approximately 26 years ago, before I quit practicing law, I won the case of *Arndell v. Gordon* in the Nevada Supreme Court. The case was routine, Jim Gordon had sold real property in Sun Valley, Nevada to his ex-wife and her husband. Mr. and Mrs. Arndell. Then he claimed he still owned the property and filed documents clouding the title. I was hired to quiet title. I anticipated no problems and scheduled the case for a one day trial without a jury. The trial that should have taken one day, took three non-consecutive days. I was forced to set the case for trial 5 times. Then I lost the case at trial and was forced to appeal. I won that appeal. The case was not remanded; it was reversed on its facts.

My clients refused to pay. They claimed that the prediction I had apparently made that the case would cost $5,000.00 was all they were required to pay despite the fact that they had signed a fee agreement for an hourly rate. At trial an objection was interposed pursuant to the parole evidence rule about the $5,000.00. It was overruled. The trial court found in favor of the Arndells, ignoring the parole evidence rule. I appealed pursuant to the parole evidence rule. I lost that appeal. I was also denied my appeal expenses for *Arndell v. Gordon.*

Had *Norberg v. Arndell* been published and followed, it would have overruled the parole evidence rule. Without the parole evidence rule, the law of contracts makes little sense. Research indicate that the parole evidence rule has since been followed numerous times by the Nevada Supreme Court. *E.g. Frei v. Goodsell,* 305 P.3d 20 (2013). I cannot find any citation in

Nevada of *Norberg v. Arndell.* I find myself in the unique position of having been denied the right to be paid for a case that I won in the same court. I have no explanation for the odd result! The practice of not publishing cases by the Nevada Supreme Court is being used to decide cases wrong and hide them. It is dishonest and despicable.

Anticipating the argument that forcing the Nevada Supreme Court to publish the case would not benefit the Petitioner, I do not believe the Nevada Supreme Court would publish a decision as blatantly ridiculous as holding that an intentional tort is barred by a malpractice statute of limitations. The publication of *Norberg v. Nevada Center for Dermatology* would also eviscerate the entire chapter of NRS 449A, Care and Rights of Patients. If two people, one of whom is an administrative clerk, quietly sitting and watching a modestly sensitive skin examination is acting with "consideration and respect" for the patient and "directly involved in patient care," what group of observers wouldn't be? In order to prevent its publication, the Nevada Supreme Court would accept jurisdiction and overrule the Court of Appeals!

CONCLUSION

1. This case is about patient communication! It is about asking the patient first before bringing in observers to watch a patient's modestly sensitive skin exam!

2. The ruling that a malpractice statute of limitations bars an intentional tort is ridiculous!

3. The ruling that two people silently sitting and watching a skin examination without participating in the care of the patient is not "directly involved in patient care" and is also ridiculous!

4. The common law is built of precedent. The practice of not publishing decisions and forbidding them to be cited is inconsistent with the origin and nature of the common law and is unconstitutional!

Respectfully submitted,

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NOVEMBER 24, 2021