IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CT-478

Lake Imaging, LLC,
Appellant/Cross-Appellee (Defendant below)

–v–

Franciscan Alliance, Inc., et al.,
Appellee/Cross-Appellant (Plaintiff below).

Argued: December 9, 2021 | Decided: March 8, 2022

Appeal from the Johnson Superior Court,
No. 41D04-1810-CT-157
The Honorable Marla K. Clark, Judge.

On Petition to Transfer from the Indiana Court of Appeals,
No. 20A-CT-1490

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

Today, we're asked to extend the reach of the Medical Malpractice Act (MMA or Act) to include a claim for indemnification by one medical provider against another. We decline that invitation because indemnification sounds in contract, and because neither the text of the MMA nor precedent interpreting the Act support categorizing such a claim as one for medical malpractice. We therefore hold that a breach-of-contract claim for failure to indemnify need not follow the procedures contained within the Act.

Facts and Procedural History

Between 2004 and 2011, Lake Imaging provided radiology services to patients of Franciscan Alliance. By the terms of the parties' written Agreement, Lake Imaging agreed to "indemnify and hold [Franciscan] harmless from any liability claimed as a result of [Lake Imaging's] negligence" in providing these services. Lake Imaging's App., Vol. 2, p. 93.

Joseph Shaughnessy was a patient at Franciscan in April 2011. While there, Lake Imaging interpreted two CT scans performed on Joseph. Joseph died on April 25, 2011. Just under two years later—on April 10, 2013—Joseph's sons (the Shaughnessys) filed with the Department of Insurance (DOI) a proposed medical-malpractice complaint against Franciscan. Lake Imaging was not named in the Shaughnessys' proposed complaint. The DOI served the proposed complaint on Franciscan on May 20, 2013.

Franciscan eventually settled with the Shaughnessys on September 25, 2016. After reaching that settlement, Franciscan sought indemnity from Lake Imaging on the theory that Lake Imaging's alleged negligence in interpreting Joseph's CT scans led to his death. Lake Imaging failed to respond, and Franciscan filed suit on July 17, 2018. In its complaint, Franciscan alleged breach of contract for Lake Imaging's failure to provide "competent medical care" and for failure to indemnify Franciscan. *Id.* at 76. Franciscan also sought a declaratory judgment against Lake Imaging's

insurer, ProAssurance Indemnity Co., for payment of any judgment rendered against Lake Imaging.

Lake Imaging moved for summary judgment, arguing that, because Franciscan premised its claim on alleged malpractice by Lake Imaging, the MMA's two-year statute of limitations had lapsed. *See* Ind. Code § 34-18-7-1(b). But instead of addressing the statute-of-limitations claim, the trial court found that it lacked subject-matter jurisdiction over Franciscan's complaint because the MMA required Franciscan to present its claim to the DOI for an opinion from a medical-review panel before filing suit. *See* I.C. § 34-18-8-4. The trial court therefore dismissed Franciscan's claim for breach of contract without prejudice.[1] Lake Imaging appealed, and Franciscan cross-appealed.

The Court of Appeals affirmed, holding that, because Franciscan's claim rested on Lake Imaging's alleged medical negligence, the MMA applied. *Lake Imaging, LLC v. Franciscan All., Inc.*, 171 N.E.3d 619, 625, 627 (Ind. Ct. App. 2021). In so holding, the panel interpreted the MMA broadly to cover any "claimant" (rather than just an "injured patient") and to encompass any "contract" claim "against a health care provider" based on "professional services or health care that was provided or that should have been provided." *Id.* at 623–24 (quoting I.C. § 34-18-7-1, I.C. § 34-18-8-4). This conclusion, the panel reasoned, corresponds with the MMA's purpose of reducing malpractice claims—a purpose expressed in the Act's two-year occurrence-based statute of limitations and in the jurisdictional prerequisite of filing claims with a medical-review panel. *Id.* at 624–25. The Court of Appeals acknowledged that its holding would effectively require healthcare providers seeking to enforce their indemnification rights within the MMA's limitations period to sue before suffering a loss. *Id.* at 625. But, the panel opined, Franciscan could have protected itself against liability by notifying its patients that an independent contractor

[1] The trial court also dismissed Franciscan's claim that Lake Imaging breached its contract by failing to provide appropriate radiology service. Franciscan did not appeal the trial court's dismissal of this claim, so we summarily affirm its dismissal.

provided the healthcare services. *Id.* at 626 (quoting *Sword v. NKC Hospitals, Inc.*, 714 N.E.2d 142, 152 (Ind. 1999)).

The panel also held that, because Franciscan failed to file a proposed medical-malpractice complaint with the DOI, the trial court properly dismissed Franciscan's claim without prejudice for lack of subject-matter jurisdiction. *Id.* The panel noted, however, that the statute of limitations had passed, rendering futile any subsequent claim filed by Franciscan. *Id*. at 626–27.

Franciscan petitioned this Court for transfer, which we granted, vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

Standards of Review

This case involves questions of statutory interpretation and questions of contract interpretation. We apply a de novo standard of review to both issues. *Ladra v. State*, 177 N.E.3d 412, 415 (Ind. 2021); *Schwartz v. Heeter*, 994 N.E.2d 1102, 1105 (Ind. 2013). A de novo standard also applies to the question of subject-matter jurisdiction when, like here, there is no factual dispute before the trial court. *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001).

Discussion and Decision

Lake Imaging maintains that Franciscan's claim for breach of contract falls within the claims the MMA was intended to address. Therefore, Lake Imaging argues, the MMA's two-year statute of limitations applies and Franciscan's claim is time-barred. Franciscan counters that the claim does not fall under the MMA because the claim is one for breach of contract rather than for medical malpractice. And because the breach of the Agreement's indemnity clause is a general breach-of-contract claim, Franciscan contends, the ten-year statute of limitations for breach of contract applies. *See* I.C. § 34-11-2-11.

We begin our analysis with the applicability of the MMA. *See* Pt. I, *infra*. We then turn to the issues of subject-matter jurisdiction and the

applicability of the MMA's statute of limitations. *See* Pt. II, *infra.* Next, we address Lake Imaging's claim that the Agreement's expiration caused the indemnification clause to terminate. *See* Pt. III, *infra*. Finally, we turn to the issue of liability on the part of ProAssurance, Lake Imaging's insurer. *See* Pt. IV, *infra*.

I. The MMA does not apply to Franciscan's breach-of-contract claim.

Lake Imaging contends that, because Franciscan is defined as a "patient" under the MMA, its indemnification claim is subject to the Act's two-year statute of limitations. Resp. to Pet. to Trans. at 9. For its part, Franciscan argues that, by its plain terms, the MMA applies only to "'a patient or the representative of a patient who has a **claim for bodily injury or death** on account of malpractice.'" Pet. to Trans. at 18–19 (quoting I.C. § 34-18-8-1) (bold emphasis added).

We agree with Franciscan's reading of the Act.

A. Neither the text of the MMA nor precedent interpreting the Act support categorizing Franciscan as a "patient."

When reviewing a statute, our primary goal is to determine and follow the legislature's intent. *Matter of Supervised Estate of Kent*, 99 N.E.3d 634, 638 (Ind. 2018). The best evidence of this intent is the statutory language itself, which, when given its plain and ordinary meaning, should apply "in a logical manner consistent with the statute's underlying policy and goals." *Cubel v. Cubel*, 876 N.E.2d 1117, 1120 (Ind. 2007). We examine the statute as a whole, avoiding "interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results." *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016).

A "patient" under the MMA refers to "an individual who receives or should have received health care from a health care provider, under a contract, express or implied." I.C. § 34-18-2-22. This includes an individual

with "a claim of any kind, whether derivative or otherwise, as a result of alleged malpractice on the part of a health care provider." *Id.* A derivative claim includes "the claim of a parent or parents, guardian, trustee, child, relative, attorney, or any other representative of the patient including claims for loss of services, loss of consortium, expenses, and other similar claims." *Id.*

This provision of the MMA appears to contemplate a broad definition of "patient." However, it must be read in conjunction with other provisions of the Act. *See Farber v. State*, 729 N.E.2d 139, 140 (Ind. 2000) (emphasizing that statutes must "be read as a whole"). Under Indiana Code section 34-18-8-1, a "patient or the representative of a patient who has a claim under this article for **bodily injury or death** on account of malpractice may" file a complaint after following the necessary statutory procedures. (Emphasis added). This section expressly provides that the MMA is intended to cover only claims for bodily injury or death, not claims for breach of contract.

Still, Lake Imaging contends that the MMA applies to Franciscan's claim because it applies to **any** claim, "whether in contract or tort." Appellant's Br. at 22 (quoting I.C. § 34-18-7-1). But section 34-18-7-1 identifies the MMA's limitations period, not the type of claim subject to the MMA. Moreover, this language simply recognizes the physician-patient relationship as a contractual one. Indeed, as this Court has observed, the "duty of a physician to a patient arises from the contractual relationship entered into between the two of them." *Walker v. Rinck*, 604 N.E.2d 591, 594 (Ind. 1992). What's more, there is nothing in the MMA to suggest that it extends beyond the physician-patient relationship to encompass commercial contracts between healthcare providers. Instead, the inclusion of "whether in contract or tort" ensures that claims by patients for medical malpractice resulting in bodily injury or death, including those framed as breach-of-contract claims, are brought within

the procedural requirements, and under the same limitations, established by the Act.[2]

To be sure, this Court has recently recognized a "broader class of eligible claimants under the Act." *Cutchin v. Beard*, 171 N.E.3d 991, 995 (Ind. 2021). In *Cutchin*, the widower and father of two passengers killed in a car accident filed a wrongful-death claim under the MMA, alleging negligence by the doctor who prescribed opioids to the at-fault motorist, whom authorities determined was under the influence at the time. *Id.* at 993–94. Responding to a certified question from the Seventh Circuit Court of Appeals, this Court held that the MMA "applies when a plaintiff alleges that a qualified health-care provider treated someone else negligently and that the negligent treatment injured the plaintiff." *Id.* at 993. The statutory "patient," we explained, falls into two categories: (1) a traditional patient with a direct relationship with a healthcare provider, and (2) a third party with a claim against a provider for malpractice to a traditional patient. *Id.* at 995. The plaintiff, as the injured party, fell into this latter group, we concluded, "because he ha[d] a wrongful-death claim resulting from" the doctor's "alleged malpractice" to the at-fault driver—*i.e.*, the "traditional patient." *Id.*

On first impression, our decision in *Cutchin* seems to support Lake Imaging's position. But the facts of that case render it distinguishable from this one. *Cutchin* involved a malpractice claim resulting from bodily injury or death, precisely the type of claim the MMA is intended to cover. *See* I.C. § 34-18-8-1 (specifying that a "patient or the representative of a patient who has a claim under this article **for bodily injury or death** on account of malpractice may" file a complaint after following the necessary statutory procedures) (emphasis added). Franciscan's breach-of-contract

[2] As a prerequisite to filing suit, the Act generally requires claimants to file a proposed complaint with a medical review panel. I.C. § 34-18-8-4. The complaint is then reviewed by the panel, which provides an expert opinion about whether the claim involves malpractice. I.C. § 34-18-10-22. If the claimant files a suit in court, the expert opinion is admissible but not conclusive. I.C. § 34-18-10-23. Finally, the Act limits recovery against covered medical providers and allows any excess damages to be paid out of the Patient's Compensation Fund. I.C. § 34-18-14-3.

claim, by contrast, is not a claim for "bodily injury or death on account of malpractice."[3] Nor is it a "derivative" claim "similar" to a claim for loss of services, loss of consortium, or medical expenses. *See* I.C. § 34-18-2-22.

B. Expanding the MMA's application to the type of claim at issue here conflicts with the purpose of the Act.

In 1975, the Medical Malpractice Study Commission, a creature of the General Assembly, produced a report in which it outlined the problems of medical malpractice and its effect on Hoosiers and the Indiana medical community. Otis R. Bowen, *Medical Malpractice Law in Indiana*, 11 J. Legis. 15, 15 (1984). These problems included rising premiums for malpractice insurance, primary-care physicians leaving the field early, surgeons declining to perform high-risk surgeries, and hospitals reducing the services offered. *Id*. at 16. The high cost of litigation also encouraged practitioners to order unnecessary procedures. *Id*. at 15 n.6. The subsequent adoption of the MMA sought to address these problems, aiming to prevent "the reduction of health care services available to the public" that resulted from "increased malpractice claims and the difficulty in obtaining malpractice insurance." *Havens v. Ritchey*, 582 N.E.2d 792, 794 (Ind. 1991).

Expanding the MMA's application to the type of indemnification claim at issue here conflicts with the purpose of curtailing liability for medical malpractice. To begin with, such a scheme would unnecessarily complicate the parties' ability to allocate risk. Typically, the "obligation to indemnify does not arise until the party seeking indemnity suffers loss or damages," whether "at the time of payment of the underlying claim, payment of a judgment on the underlying claim, or payment in settlement of the underlying claim." *TLB Plastics Corp. v. Procter & Gamble Paper Products Co.*,

[3] While arguing that *Cutchin* resolves the issue here, Lake Imaging "acknowledges that the specific issue of whether the [MMA's] statute of limitations applies to an indemnity claim based on malpractice has not been decided by an Indiana appellate court." Resp. to Pet. to Trans. at 11.

542 N.E.2d 1373, 1376 (Ind. Ct. App. 1989). *See also Pflanz v. Foster*, 888 N.E.2d 756, 759 (Ind. 2008) (noting that a party raising a claim for indemnification "must wait until after the obligation to pay is incurred, for otherwise the claim would lack the essential damage element"). Applying the MMA's two-year limitations period to a healthcare provider seeking to enforce its indemnification rights before the contractual claim accrues would effectively force that provider to preemptively sue for declaratory judgment. Here, for example, Franciscan didn't receive notice of the Shaughnessy's claim until the statute of limitations for medical malpractice had passed. So, for Franciscan to have preserved its indemnity claim, it would have had to sue Lake Imaging for its contractual claim before knowing that the Shaughnessys had sued for medical malpractice.

Such an arrangement would effectively transform the collaborative role of independent healthcare providers into an adversarial one—an arrangement that runs contrary to the MMA's purpose of "curtail[ing] liability for medical malpractice." *See Chamberlain v. Walpole*, 822 N.E.2d 959, 963 (Ind. 2005).

Expanding the MMA's application to the type of indemnification claim at issue here would likewise conflict with the purpose of a medical-review panel—that is, to "encourage the mediation and settlement of claims and [to] discourage the filing of unreasonably speculative lawsuits." *Johnson v. St. Vincent Hosp., Inc.*, 273 Ind. 374, 388–89, 404 N.E.2d 585, 595 (1980), *overruled on other grounds by In re Stephens*, 867 N.E.2d 148 (Ind. 2007). Enforcing the terms of an indemnification agreement falls beyond the purview of a medical-review panel's expertise. *See Wood v. Schuen*, 760 N.E.2d 651, 656 (Ind. Ct. App. 2001) (a pure "legal question" is "not one reserved for a medical review panel"). Indeed, the medical-review panel here expressly declined to "render an opinion [on] whether there was an agency relationship" between Franciscan and Lake Imaging. Lake Imaging's App., Vol. 2, p. 127. That issue, the review panel opined, was "a question for the judge and/or jury." *Id.* Imposing such an obligation on a review panel would effectively undermine its purpose, potentially drawing out the litigation process and ultimately leading to fewer settlements.

II. Because the MMA doesn't apply, the trial court had subject-matter jurisdiction and the MMA's statute of limitations does not apply.

A trial court generally lacks subject-matter jurisdiction over a medical-malpractice claim if the plaintiff fails to first submit a proposed complaint to the DOI. *St. Anthony Med. Ctr., Inc. v. Smith*, 592 N.E.2d 732, 735–36 (Ind. Ct. App. 1992). But, because this is an ordinary contract claim, rather than a claim for medical malpractice, no such procedural requirement applied to Franciscan's claim. The trial court, therefore, erred in dismissing the case for lack of subject-matter jurisdiction.

Because the MMA does not apply to Franciscan's claim, neither does the Act's two-year statute of limitations.[4] Instead, Franciscan contends, the ten-year limitations period for breach of contract applies. However, the statute on which Franciscan relies governs "contracts in writing **other than those for the payment of money**." I.C. § 34-11-2-11 (emphasis added). Claims premised on "written contracts **for the payment of money**," on the other hand, must be commenced within six years after the cause of action accrues. I.C. § 34-11-2-9 (emphasis added). Our case law offers no clear answer to whether a contract for indemnity is a contract "for the payment of money." *Compare Fid. & Cas. Co. of New York v. Jasper Furniture Co.*, 186 Ind. 566, 568, 117 N.E. 258, 258 (1917) (holding that an insurance contract is a written contract for the payment of money), *with Folkening v. Van Petten*, 22 N.E.3d 818, 820, 822 (Ind. Ct. App. 2014) (holding that a contract containing release, indemnification, and non-disparagement clauses, "among other provisions," covered "more than just the payment of money").

[4] Lake Imaging draws parallels between this case and *Generali-U.S. Branch v. Lachel & Associates, Inc.*, in which the U.S. District Court for the Southern District of Indiana found that the statute of limitations for the provision of professional services applied to an indemnification claim. No. 4:17-cv-00168-TWP-DML (S.D. Ind. Feb. 19, 2019). While the language in Indiana Code section 34-11-2-3, which defines the scope of liability for professional services related actions, is strikingly similar to that of the MMA, we limit our holding today to the statute before us: the MMA.

Regardless, we need not decide whether the ten-year or six-year statute of limitations applies because Franciscan's indemnification claim—having accrued when it settled with the Shaughnessys on September 25, 2016—falls within both of them.[5]

III. The Agreement's indemnification clause had not expired.

Lake Imaging also argues that, because the Agreement expired on April 30, 2011, any obligation it may have had to indemnify Franciscan expired long before Franciscan demanded payment in May 2018. For comparative support, Lake Imaging cites *Exide Corp. v. Millwright Riggers, Inc.*, in which the contract at issue contained an indemnity clause that expressly "survive[d] the termination or expiration" of the parties' agreement. 727 N.E.2d 473, 479 (Ind. Ct. App. 2000). No similar language appears in the Agreement here, Lake Imaging points out, "and this Court is not free to rewrite the contract to include such a provision." Resp. to Pet. to Trans. at 19.

We reject this argument. The Agreement specified no time limit on when Franciscan must have suffered a loss. Rather, it required Lake Imaging to indemnify Franciscan for "any liability claimed as a result of [its] negligence in the provision of services undertaken." The Agreement does not specify that the loss (Franciscan's settlement with the Shaughnessys) must be suffered during the life of the Agreement, only that the "provision of service" (Lake Imaging's alleged professional negligence) must be "undertaken under [the] [A]greement."

Courts must give a contract's clear and unambiguous language its ordinary meaning. *Ryan v. TCI Architects/Engineers/Contrs., Inc.*, 72 N.E.3d

[5] Had we treated Franciscan's claim as a medical-malpractice claim, the statute of limitations would have lapsed on April 26, 2013, two years after Joseph died. And because Franciscan wasn't served with the Shaughnessys' proposed complaint until May 20, 2013, it would have been unable to file a complaint against Lake Imaging after receiving service of the proposed complaint.

908, 914 (Ind. 2017). Courts may not construe clear and unambiguous provisions, nor may courts add provisions not agreed upon by the parties. *Broadbent v. Fifth Third Bank*, 59 N.E.3d 305, 311 (Ind. Ct. App. 2016). Nothing in the Agreement indicates that the obligation to indemnify for past services would end when the contract terminated. The services provided to Mr. Shaughnessy were provided under the Agreement, so, as long as the act of professional negligence upon which the indemnity claim is based took place while the contract was in effect, the timing of the Shaughnessys' suit does not prevent Franciscan's recovery.

IV. The trial court should consider ProAssurance's potential liability on remand.

Finally, we turn to an issue raised by ProAssurance, Lake Imaging's insurer. ProAssurance argues that it is not required to indemnify Lake Imaging because the insurance policy does not cover claims for breach of contract. The trial court did not address this argument because it determined that it lacked subject-matter jurisdiction over Franciscan's claim. Because the trial court has jurisdiction over Franciscan's claim, it should consider ProAssurance's potential liability on remand. We therefore remand this issue for the trial court's consideration.

Conclusion

Because Franciscan's claim for breach of contract was not one for medical malpractice, we reverse the trial court's dismissal of that claim. We also direct the trial court to consider and resolve the issue of ProAssurance's obligation to indemnify Lake Imaging. We affirm the trial court's dismissal of Franciscan's claim that Lake Imaging breached their contract by committing medical malpractice.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

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