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IN THE
COURT OF APPEALS OF INDIANA

Lake Imaging, LLC,
Appellant/Cross-Appellee-Defendant,

v.

Franciscan Alliance, Inc.
f/d/b/a Saint Margaret Mercy
Health Centers,
Appellee/Cross-Appellant-Plaintiff

May 4, 2021

Court of Appeals Case No.
20A-CT-1490

Appeal from the
Johnson Superior Court

The Honorable
Marla K. Clark, Judge

Trial Court Cause No.
41D01-1810-CT-157

and

ProAssurance Indemnity Company, Inc.,
Appellee/Cross-Appellant-Defendant

Vaidik, Judge.

Case Summary

[1] The primary issue in this case is whether an indemnity claim by a healthcare provider against another healthcare provider based on alleged medical negligence is subject to Indiana's Medical Malpractice Act. We hold that it is.

Facts and Procedural History

[2] In 2004, Lake Imaging, LLC, and Franciscan Alliance, Inc., entered into an agreement under which Lake Imaging would provide radiology services as an independent contractor at certain Franciscan hospitals. The agreement included the following indemnification clause: "[Lake Imaging] agrees to indemnify and hold [Franciscan] harmless from any liability claimed as a result of [Lake Imaging's] negligence in the provision of services undertaken under this agreement." Lake Imaging App. Vol. II p. 93.

[3] Between April 19 and April 25, 2011, Joseph Shaughnessy was a patient at a Franciscan hospital, and Lake Imaging radiologists interpreted two CT scans of his head. Franciscan did not notify Joseph that radiology services would be provided by an independent contractor. Joseph died on April 25, 2011.

[4] On April 10, 2013, Joseph's sons ("the Shaughnessys") filed a proposed medical-malpractice complaint with the Indiana Department of Insurance (DOI) against Franciscan and other medical providers. Neither Lake Imaging nor any of its radiologists was named in the proposed complaint or brought into the case by any of the named defendants.

[5] In January 2014, Franciscan notified Lake Imaging that one of the named defendants had recently alleged the following in a written discovery response:

> The radiologists who interpreted the April 19, 2011 and April 23, 2011 CT scans did not report the presence of a right-sided subdural hematoma. The hematoma appears to have progressed, ultimately causing the patient's respiratory compromise and his subsequent death. Had the subdural hematoma been identified, management would have been different. It is not clear whether earlier identification would have changed the patient's outcome. Discovery continues.

Lake Imaging App. Vol. III p. 94. Franciscan stated it intended to seek indemnification under the indemnification clause "for any and all costs, expenses, damages and judgments that are imposed upon or incurred by [Franciscan] in this matter as a result of any negligence of Lake Imaging or its employed physicians[.]" *Id.* at 95.

[6] In November 2015, a DOI medical-review panel rendered a unanimous opinion that "[t]he evidence does not support the conclusion that [Franciscan] failed to meet the applicable standard of care as charged in the complaint." Lake Imaging App. Vol. II pp. 126-36. Nonetheless, the Shaughnessys pursued their claim in court. In September 2016, Franciscan and the Shaughnessys agreed to the entry of summary judgment for Franciscan on all the Shaughnessys' claims "except [Franciscan's] potential vicarious liability for unnamed radiologists who interpreted [Joseph's] head CT scans." *Id.* at 114. Later that month, the parties settled that remaining claim for $187,001.

[7] In May 2018, Franciscan sent Lake Imaging a letter demanding indemnification of the settlement amount pursuant to the indemnification clause. (Franciscan does not tell us why it waited nearly two years to demand indemnification.) Lake Imaging did not pay, and in July 2018, Franciscan sued, claiming breach of the indemnification clause. Lake Imaging moved for summary judgment, arguing, among other things, that Franciscan's claim is based on alleged medical negligence by Lake Imaging, is therefore a claim for medical malpractice, and is barred by the medical-malpractice statute of limitation, which provides such actions generally must be filed "within two (2) years after the date of the alleged act, omission, or neglect[.]" Ind. Code § 34-18-7-1(b). The trial court agreed that Franciscan's claim is one for medical malpractice. However, it did not reach the statute-of-limitation issue or grant Lake Imaging summary judgment. Instead, because Franciscan did not present its claim to the DOI and obtain an opinion from a medical-review panel before

filing suit, as required by the Medical Malpractice Act (MMA), the court concluded it lacked subject-matter jurisdiction over the claim and dismissed it without prejudice, leaving Franciscan free to refile.

[8] Lake Imaging now appeals, and Franciscan cross-appeals.[1]

Discussion and Decision

[9] The parties challenge both aspects of the trial court's summary-judgment order. Franciscan contends the court erred by finding its claim against Lake Imaging to be one for medical malpractice, subject to the requirements of the MMA. Lake Imaging argues the court got that part right but asserts that, instead of dismissing Franciscan's claim without prejudice for lack of subject-matter jurisdiction, the court should have gone on to address Lake Imaging's statute-of-limitation defense. These are issues of law, which we review de novo. *Easler v. State*, 131 N.E.3d 584, 588 (Ind. 2019).

I. The trial court properly found Franciscan's claim to be one for medical malpractice

[10] We begin by addressing Franciscan's argument that the trial court erred by concluding Franciscan's claim against Lake Imaging is one for medical malpractice and therefore subject to the MMA. Franciscan contends its claim is

[1] Lake Imaging's insurer, ProAssurance Indemnity Company, Inc., was also sued by Franciscan and has also filed briefs on appeal. Because we affirm the trial court's dismissal of Franciscan's claim, the coverage issues ProAssurance raises are moot, and we need not address them.

a straightforward indemnification action that did not accrue until 2018, when Lake Imaging refused to indemnify it for the Shaughnessy settlement. According to Franciscan, the claim is subject to the ten-year statutory limitation period for actions on written contracts, *see* Ind. Code § 34-11-2-11, meaning Franciscan had until 2028 to file it. Franciscan argues the MMA covers only claims brought by injured patients or their representatives. Lake Imaging, on the other hand, contends Franciscan's claim is subject to the MMA—including its statute of limitation and the medical-review panel requirement—because it is based on alleged medical negligence by Lake Imaging. Based on the text and purpose of the MMA, we agree with Lake Imaging.

[11] In interpreting statutes, our goal is to determine and give effect to the intent of the legislature. *Daniels v. FanDuel, Inc.*, 109 N.E.3d 390, 394 (Ind. 2018). We examine the statutory language to give effect to the plain and ordinary meaning of the terms used, and we presume the legislature intended the language to be applied logically and consistently with the underlying policy and goals of the statute. *Id.*

[12] In arguing the MMA applies only to claims brought by injured patients or their representatives, Franciscan relies on Indiana Code section 34-18-8-1, which provides:

> Subject to IC 34-18-10 and sections 4 through 6 of this chapter, **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 do the following:

> (1) File a complaint in any court of law having requisite jurisdiction.
>
> (2) By demand, exercise the right to a trial by jury.

(Emphasis added). Franciscan maintains that, because it is neither a patient nor the representative of a patient, its claim against Lake Imaging is not subject to the MMA.

[13] However, other provisions in the MMA show it applies more broadly. The statute of limitation provides, in part:

> **A claim, whether in contract or tort,** may not be brought against a health care provider **based upon professional services or health care that was provided or that should have been provided** unless the claim is filed within two (2) years after the date of the alleged act, omission, or neglect, except that a minor less than six (6) years of age has until the minor's eighth birthday to file.

I.C. § 34-18-7-1 (emphases added). Franciscan's claim falls neatly under this statute: it is (1) "in contract," (2) "against a health care provider," and (3) "based upon professional services or health care that was provided or that should have been provided."

[14] In addition, Indiana Code section 34-18-8-4, which establishes the medical-review-panel requirement, references a "claimant," not a "patient":

> Notwithstanding section 1 of this chapter, and except as provided in sections 5 and 6 of this chapter, an action against a health care provider may not be commenced in a court in Indiana before:
>
> > (1) the **claimant's** proposed complaint has been presented to a medical review panel established under IC 34-18-10 (or IC 27-12-10 before its repeal); and
> >
> > (2) an opinion is given by the panel.

(Emphasis added). Other MMA provisions also refer to the "claimant" instead of a "patient." *See* Ind. Code §§ 34-18-8-5 (providing "a claimant" can go straight to court without first going through a medical-review panel "if the claimant and all parties named as defendants in the action agree that the claim is not to be presented to a medical review panel"), 34-18-8-7 (providing "a claimant may commence an action in court for malpractice at the same time the claimant's proposed complaint is being considered by a medical review panel," as long as the complaint filed in court does not identify the defendant and the "claimant" does not pursue the action until the medical-review panel has rendered its opinion).

[15] These provisions leave us convinced the legislature did not intend to limit the MMA's coverage to the "typical" medical-malpractice action—one brought by an injured patient or the representative of an injured patient. Rather, the language of these statutes is broad enough to include an indemnification claim by one healthcare provider against another healthcare provider, if the claim is based on the alleged medical negligence of the latter.

[16] Our interpretation of these statutes is consistent with the purposes underlying the MMA. The overall purpose of the MMA was to combat "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). The statute of limitation was an important part of this response. The legislature made the medical-malpractice statute occurrence-based rather than discovery-based, like many other statutes of limitation. *See* I.C. § 34-18-7-1(b) (providing the two-year period begins to run "after the date of the alleged act, omission, or neglect").[2] This indicates our legislature believed the reasons for a statute of limitation—"to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost"—are "even stronger in the medical malpractice context." *Havens*, 582 N.E.2d at 794. The statute was also enacted for the more general purpose of "limiting patient remedies against health care providers[.]" *Id.* at 794-95. This rationale applies regardless of whether the defendant healthcare provider is sued by a patient who has been injured or by another healthcare provider seeking indemnification based on alleged medical negligence.

[2] There are limited situations in which suit can be filed more than two years after the "occurrence" at issue. *See, e.g., Martin v. Richey*, 711 N.E.2d 1273 (Ind. 1999).

[17] Similarly, the purpose of requiring a claim to go through a medical-review panel before proceeding in court, *see* Ind. Code § 34-18-8-4, is to obtain a medical opinion "as free from influence and prejudice as possible under the circumstances" in order to reduce "the number of malpractice claims and large judgments and settlements in connection with them." *Johnson v. St. Vincent Hosp., Inc.*, 273 Ind. 374, 387, 404 N.E.2d 585, 594 (1980), *overruled on other grounds by In re Stephens*, 867 N.E.2d 148 (Ind. 2007), and *Collins v. Day*, 644 N.E.2d 72 (Ind. 1994). The knowledge and experience gained by the claimant, the insurer, and the healthcare provider during the panel process

> will encourage the mediation and settlement of claims and discourage the filing of unreasonably speculative lawsuits. The mental, financial and time-consuming burdens imposed upon health care providers by lawsuits which should have been settled by their insurers or which should not have been instituted will be lessened, and the disruption of and impairment to their continued vital services reduced.

Id. at 388-89, 404 N.E.2d at 595. These important interests are implicated anytime a healthcare provider is sued for medical negligence, regardless of the identity of the plaintiff.

[18] For these reasons, the trial court properly concluded Franciscan's indemnity claim, which is based on the alleged medical negligence of Lake Imaging, is subject to the requirements of the MMA.[3]

[19] Of course, our holding means that healthcare providers with a right to indemnification in situations like this will often have to sue before they have actually suffered a loss, in order to satisfy the medical-malpractice statute of limitation. "The obligation to indemnify does not arise until the party seeking indemnity suffers loss or damages; that is, 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 Prods. Co.*, 542 N.E.2d 1373, 1376 (Ind. Ct. App. 1989), *reh'g denied*, *trans. dismissed*. However, given the important purposes underlying the MMA and its statute of limitation, this departure from the normal sequence of events is justified. Moreover, Trial Rule 14 "permits a claim for indemnity to be litigated contemporaneously with the injured party's claim." *Fitz v. Rust-Oleum Corp.*, 883 N.E.2d 1177, 1181 (Ind. Ct. App. 2008), *reh'g denied*, *trans. denied*; *see* Ind. Trial Rule 14(A) ("A defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action

[3] Courts in other jurisdictions have also held that an indemnity claim based on alleged medical negligence by a healthcare provider is subject to medical-malpractice statutes. *See McNamara v. Benchmark Ins. Co.*, 261 So. 3d 213 (Ala. 2017); *Columbia/CSA-HS Greater Columbia Healthcare Sys. v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 769 S.E.2d 847 (S.C. 2015), *reh'g denied*; *Uldrych v. VHS of Ill., Inc.*, 942 N.E.2d 1274 (Ill. 2011); *Christus St. Vincent Reg'l Med. Ctr. v. Duarte-Afara*, 267 P.3d 70 (N.M. Ct. App. 2011); *Harrison v. Glendel Drilling Co.*, 679 F. Supp. 1413 (W.D. La. 1988); *but see Aherron v. St. John's Mercy Med. Ctr.*, 713 S.W.2d 498 (Mo. 1986).

who is or may be liable to him for all or part of the plaintiff's claim against him.").

[20] For Franciscan, our holding means it had only about two weeks to bring Lake Imaging into the case after the Shaughnessys filed their claim with the DOI on April 10, 2013, because on that date only about two weeks remained in the medical-malpractice limitation period. Franciscan asserts:

> Requiring contractual indemnification claims such as Franciscan's to be litigated under the unique constraints of the [MMA] would have far-reaching, adverse implications for all Indiana physicians and hospital systems. In today's delivery of modern medicine, hospital systems typically staff their facilities by contracting with individual physicians and physician groups. Moreover, claims for medical malpractice are routinely filed with the IDOI on the eve of the expiration of the two-year statute of limitations, which is what happened here.
>
> Hospitals that have contractual indemnification agreements with the physicians on their medical staff, like Franciscan, would be forced to immediately scour the patient's lengthy medical record, identify every physician who cared for the patient, and file a third-party complaint against each physician just to preserve a contractual indemnity claim in the event the physician is later alleged to have been negligent.

Franciscan's Br. pp. 27-28. But if Franciscan did not want to be placed in that position, it could have protected itself.

[21] In *Sword v. NKC Hospitals, Inc.*, our Supreme Court held a hospital generally can avoid vicarious liability for negligence of an independent contractor by

providing meaningful written notice to the patient, acknowledged at the time of admission, "that it is not the provider of care and that the care is provided by a physician who is an independent contractor and not subject to the control and supervision of the hospital." 714 N.E.2d 142, 152 (Ind. 1999). Here, it is undisputed Franciscan did not give Joseph notice that Lake Imaging would be providing radiology services. If it had, and the Shaughnessys later sought to hold it vicariously liable for negligence by Lake Imaging, Franciscan would have had a defense under *Sword*. By failing to give the notice, Franciscan gave up the benefit of the *Sword* defense and put itself in the position in which it found itself: facing vicarious liability for negligence by Lake Imaging but with only two weeks to bring Lake Imaging into the case. If that was not enough time for Franciscan to "scour" the records of Joseph's treatment, it has only itself to blame.

II. The trial court properly dismissed Franciscan's claim without prejudice for lack of subject-matter jurisdiction

[22] While Franciscan's claim, as one for medical malpractice, is clearly barred by the medical-malpractice statute of limitation, the trial court properly dismissed the claim for lack of subject-matter jurisdiction without reaching that issue. Lake Imaging argues Franciscan's failure to present its claim to the DOI was merely a "procedural error" that "does not impact the court's subject matter jurisdiction." Lake Imaging's Br. p. 14 (citing *K.S. v. State*, 849 N.E.2d 538 (Ind. 2006)). However, we have repeatedly held that, subject to exceptions not applicable here, a court does not have subject-matter jurisdiction over a claim of

medical malpractice until a proposed complaint has been presented to the DOI and a medical-review panel has rendered an opinion. *See, e.g., Cortez v. Ind. Univ. Health Inc.*, 151 N.E.3d 332, 338 (Ind. Ct. App. 2020); *Terry v. Cmty. Health Network, Inc.*, 17 N.E.3d 389, 393 (Ind. Ct. App. 2014); *H.D. v. BHC Meadows Hosp., Inc.*, 884 N.E.2d 849, 853 (Ind. Ct. App. 2008), *reh'g denied*, *trans. denied*; *Putnam Cnty. Hosp. v. Sells*, 619 N.E.2d 968 (Ind. Ct. App. 1993). And, as the trial court noted, "When there is a lack of subject matter jurisdiction, the court is without jurisdiction to do anything in the case except to enter an order of dismissal." *Ind. Family & Soc. Servs. Admin. v. Legacy Healthcare, Inc.*, 756 N.E.2d 567, 572 (Ind. Ct. App. 2001). A dismissal for lack of subject-matter jurisdiction is necessarily without prejudice. *Hart v. Webster*, 894 N.E.2d 1032, 1037 (Ind. Ct. App. 2008). As such, the trial court properly dismissed Franciscan's claim without prejudice rather than going on to address Lake Imaging's statute-of-limitation defense.[4]

[23] That said, the statute of limitation would be fatal to any claim Franciscan were to now file with the DOI. *See* Ind. Code § 34-18-11-1 (allowing a court to "preliminarily determine an affirmative defense" while a proposed complaint is pending before the DOI). Therefore, while the dismissal without prejudice

[4] In *Metz as Next Friend of Metz v. Saint Joseph Regional Medical Center-Plymouth Campus, Inc.*, 115 N.E.3d 489 (Ind. Ct. App. 2018), the trial court dismissed an untimely medical-malpractice suit both for lack of subject-matter jurisdiction (because the claim was never presented to a medical-review panel) and based on the statute of limitation. On appeal, we affirmed both rulings, but the opinion does not indicate that any party challenged the trial court's authority to reach the statute-of-limitation issue.

technically leaves Franciscan free to file such a claim, we do not expect it to do so.

[24] Affirmed.

Brown, J., and Pyle, J., concur.