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IN THE
COURT OF APPEALS OF INDIANA

Dawn Riddle and Matthew
Riddle,
Appellants-Plaintiffs,

v.

Syed J. Khan, Chaitanya
Chekilla, and Christopher H.
Scruton,
Appellees-Defendants.

April 5, 2021

Court of Appeals Case No.
20A-PL-1441

Appeal from the Tipton Circuit Court

The Honorable Lori N. Schein,
Special Judge

Trial Court Cause No.
80C01-1902-PL-73

Darden, Senior Judge.

Statement of the Case

- [1] Dawn Riddle and Matthew Riddle sued Syed J. Khan, M.D., a board-certified psychiatrist specializing in child and adolescent psychiatry; Chaitanya Chekkilla, M.D., a board-certified specialist in family medicine; and Christopher J. Scruton, Ph.D., a psychologist, when the doctors treated two of the Riddles' children after the Indiana Department of Child Services ("DCS") removed them from the Riddles' custody. The Riddles filed a lawsuit claiming the doctors violated their parental federal constitutional rights, pursuant to 42 United States Code section 1983 (1996) ("§ 1983") by treating their children without their permission. The trial court granted summary judgment in favor of the doctors. The Riddles appeal, and we affirm.

Issue

- [2] The Riddles raise three issues, which we restate as: whether the trial court erred in granting summary judgment to Doctors Khan, Chekkilla, and Scruton.

Facts and Procedural History

- [3] In September 2016, DCS removed seventeen-year-old M.R., date of birth June 17, 1999, and thirteen-year-old J.R. from the Riddles' custody due to a report of neglect and abuse.¹ On September 29, 2016, DCS filed its petition in the juvenile court to have the children declared to be children in need of services

¹ The Riddles also had a third child, K.R. It appears DCS removed K.R. from the Riddles' custody or that K.R. otherwise left the Riddles' care, but K.R. was not treated by any of the doctors in this case.

(“CHINS”). As a result of the removal of the children from the Riddles’ custody, DCS became responsible for the children’s welfare, including their care, custody, and control. Initially, DCS placed the children with Helen Cress, their maternal grandmother. Subsequently, on November 22, 2016, the juvenile court commenced a fact-finding hearing regarding M.R., J.R., and the Riddles, who were represented by counsel. After the initial presentation of evidence, the juvenile court wanted to continue the hearing for conclusion beyond the sixty days of the date of the filing of the CHINS petition by DCS, over the objections of the Riddles. On February 27, 2017, the juvenile court issued orders in which it ultimately determined that M.R. and J.R. were CHINS; and, apparently, by court order, placed or left custody of the children with Cress, as noted in documentation given to her by DCS. The documentation from DCS specifically provided that Cress was authorized to seek medical care, as needed, for the wards, whose case was being monitored by the Tipton County Department of Child Services.

[4] During the pendency of the CHINS case, and while the children were in her care and custody, Cress took them to health care providers as needed. On November 9, 2016, Cress presented J.R. to Dr. Scruton. The doctor examined and evaluated J.R, and later saw him on a regular basis as a patient until June 26, 2017.

[5] On December 30, 2016, Cress took M.R. to an Indianapolis hospital and presented M.R., along with a report of attempted suicide, body cutting, and expressions of suicidal ideation. Dr. Khan, a private practitioner who is

affiliated with the Community Physician Network and is not a state employee, was consulted and arranged for M.R. to be admitted to the hospital's adolescent mental health center on an inpatient basis.

[6] During M.R.'s hospitalization, a multi-disciplinary team was formed to address M.R.'s mental health issues, make plans for her treatment, education, coping skills, and safety. Matthew Riddle later admitted in a deposition that he had been notified of M.R.'s hospitalization shortly after she was admitted for treatment. Dr. Khan later recommended Celexa, an antidepressant, to treat M.R.'s mental health conditions. Upon receipt of the information regarding recommended treatment of M.R., DCS petitioned the juvenile court for approval to administer Celexa to M.R. In the petition, DCS informed the juvenile court that it had attempted to contact the Riddles, and the Riddles' counsel in the CHINS case, seeking permission to administer Celexa, but did not receive a response. On January 5, 2017, the juvenile court granted DCS's petition. The juvenile court's January 5, 2017 order was served upon the Riddles' counsel of record.

[7] On January 9, 2017, Dr. Khan again evaluated M.R. After the examination, he opined and also recommended Buspar to treat M.R.'s anxiety. Dr. Khan signed a DCS form with his recommendation. DCS then petitioned the juvenile court for permission to administer the medicine, attaching the form signed by Dr. Khan. The juvenile court granted the petition. M.R. was discharged without complications from the hospital on or about January 11, 2017, and returned to Cress's custody and care. The record is devoid of any

evidence that Dr. Khan had any further contact with or provided any additional medical treatment to or for M.R. after January 11, 2017. Further, Dr. Khan was of the opinion that prescribing Celexa and Buspar for M.R.'s mental health treatment was reasonable, appropriate and in compliance with the applicable standard of care.

[8] On February 8, 2017, the Riddles, by counsel, notified the juvenile court that they objected to the medications that Dr. Khan had prescribed for M.R.'s mental health treatment. In particular, they argued that administering the medications to M.R. without their parental consent violated their constitutional rights. On February 14, 2017, the juvenile court overruled the Riddles' objections.

[9] Meanwhile, on February 1, 2017, Cress had taken M.R. to the office of Dr. Chekkill. Dr. Chekkill, like Dr. Khan, practiced in the Community Physician Network and was not employed by the State of Indiana. Cress presented to Dr. Chekkill's office the DCS documentation authorizing her to seek medical treatment for M.R. as needed. At intake, a nurse practitioner initially saw M.R.

[10] On April 4, 2017, Cress took M.R. back to Dr. Chekkill's office for a follow-up visit and medical examination by the doctor. After the examination, Dr. Chekkill renewed M.R.'s prescriptions for Buspar and Celexa. Also, during the examination, M.R. had informed Dr. Chekkill that she was experiencing long, heavy, and painful menstrual periods, with worsening symptoms. The

doctor subsequently diagnosed M.R. with a medical condition called Dysmenorrhea, that is severe menstrual cramps, and recommended prescribing Levora, a hormone-based medication, for treatment purposes. Levora is also a medication that can be used for birth control purposes, and Dr. Chekkilla had written a letter explaining that effect. However, she further wrote that Levora was not being prescribed for birth control purposes, but was prescribed only for the reasonable and applicable treatment for Dysmenorrhea.

[11] Next, Cress contacted M.R.'s DCS case manager to request approval of the Levora prescription. The case manager consulted with the Riddles, who objected to giving M.R. a medication that could be used for birth control purposes, claiming it violated their religious beliefs. On April 5, 2017, DCS then sought permission from the juvenile court to approve the Levora prescription over the Riddles' objection, and it appears the petition was granted.

[12] Subsequently, the Riddles appealed the juvenile court's CHINS judgment. A panel of this Court ultimately reversed the juvenile court's original CHINS judgment because the juvenile court had failed to conclude the fact-finding hearing within the proscribed sixty-day statutory deadline period after the filing of the CHINS petition by DCS, and remanded the case back to the juvenile court with instructions. *See Matter of J.R. and M.R.*, 98 N.E.3d 652 (Ind. Ct.

App. 2018).² The Court did not discuss or rule upon the merits of the underlying evidence in support of the juvenile court's determination that the children were CHINS. *Id.* On remand, the juvenile court vacated its original judgment and expunged its CHINS order.

[13] On February 25, 2019, the Riddles sued Doctors Khan, Chekkillla, and Scruton pursuant to § 1983, alleging the doctors violated their parental constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments by treating M.R. and J.R. without their permission.³ The Riddles further complained the three doctors conspired with DCS and other parties to deprive them of their parental constitutional rights.

[14] On March 29, 2019, Doctors Khan and Chekkillla filed a notice of removal, indicating the case should be transferred to the United States District Court for the Southern District of Indiana. The Riddles petitioned the federal district court to remand the case back to the trial court. The federal district court granted the Riddles' petition, and the case was remanded back to the Tipton Circuit Court. Next, the Riddles filed a motion asking the trial court to disqualify itself and recuse from the case. The trial court considered the motion

² We are aware the Indiana Supreme Court subsequently somewhat modified the holding in *Matter of J.R. and M.R.* regarding the sixty-day deadline for holding a fact-finding hearing. See *Matter of M.S.*, 140 N.E.3d 279 (Ind. 2020).

³ The Riddles also sued Reta Bowen and Nicole Ryan, but Ryan was later dismissed from the case, and the Riddles' claims against Bowen are not pertinent to this appeal. In addition, the Riddles presented other claims against the three doctors on behalf of M.R., J.R., and K.R., but those claims were also dismissed and are not pertinent to this appeal.

as a motion for change of judge and granted it, leading to the appointment of a special judge.

- [15] Doctors Khan, Chekkilla, and Scruton filed motions for summary judgment. The Riddles responded to their motions. The special judge presided over oral argument and subsequently granted all three motions for summary judgment. This appeal followed.

Discussion and Decision

- [16] The Riddles argue that the trial court erred in granting summary judgment in favor of the doctors on their [§ 1983](#) claims. Summary judgment orders are reviewed de novo and require this Court to apply the same standard of review as the trial court. [AM Gen. LLC v. Armour](#), 46 N.E.3d 436, 439 (Ind. 2015). A party moving for summary judgment must present a prima facie showing “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” [Ind. Trial Rule 56\(C\)](#). If the movant makes such a showing, the burden then shifts to the nonmoving party to show the existence of a genuine material issue of fact. [Burton v. Benner](#), 140 N.E.3d 848, 851 (Ind. 2020). Evidentiary ambiguities are considered in the light most favorable to the nonmoving party. [Murray v. Indianapolis Pub. Schs.](#), 128 N.E.3d 450, 452 (Ind. 2019).
- [17] The trial court’s grant of a motion for summary judgment comes to us cloaked with a presumption of validity. [Altevogt v. Brand](#), 963 N.E.2d 1146, 1150 (Ind.

Ct. App. 2012). We must affirm the trial court’s grant of summary judgment if it can be sustained on any legal theory or basis in the record. *Id.*

[18] Section 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

[19] “It is well-established that § 1983 creates no substantive rights; it merely provides the procedure for enforcing substantive federal rights.” *Culver-Union Twp. Ambulance Serv. v. Steindler*, 629 N.E.2d 1231, 1233 (Ind. 1994). “In order to recover damages under § 1983, a plaintiff must show that (1) he held a constitutionally-protected right; (2) he was deprived of this right; (3) the defendants acted with reckless indifference to cause this deprivation; and (4) the defendants acted under color of state law.” *Id.* at 1232-33.

[20] Before we turn to the merits of the Riddles’ § 1983 claims, Dr. Khan argues the Riddles’ claims against him are time barred by the statute of limitations. The statute of limitations for a § 1983 claim is governed by the personal injury statute of limitations of the state where the alleged injury occurred. *Irwin Mortg. Corp. v. Marion Cty. Treas.*, 816 N.E.2d 439, 443 (Ind. Ct. App. 2004). In Indiana, the personal injury statute of limitations requires that an action be commenced within two years after the cause of action accrues. *Ind. Code § 34-*

11-2-4 (2013). The determination of when a cause of action accrues is generally a question of law. *Reith-Riley Constr. Co., Inc. v. Gibson*, 923 N.E.2d 472, 475 (Ind. Ct. App. 2010).

[21] The Riddles filed suit against the three doctors on February 25, 2019; therefore, any acts or omissions by the doctors occurring before February 25, 2017 would not fall within the statute of limitations period. It is undisputed that Dr. Khan last saw or treated M.R. on or about January 11, 2017, outside the statute of limitations period; however, the parties disagree as to when the Riddles may have become aware that they had an alleged cause of action against Dr. Khan.

[22] Under Indiana's Discovery Rule, a cause of action for personal injury accrues, and the statute of limitations period begins to run, when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another. *DiMaggio v. Rosario*, 52 N.E.3d 896, 906 (Ind. Ct. App. 2016), *trans. denied*. For a cause of action to accrue, it is not necessary that the full extent of damage be known or even ascertainable, but only that some ascertainable damage has occurred. *Morgan v. Benner*, 712 N.E.2d 500, 503 (Ind. Ct. App. 1999), *trans. denied*.

[23] The Riddles claim they were not made aware of the harm Dr. Khan allegedly caused them until as late as September 2018, when they spoke with M.R. Based on the undisputed facts in the record, we disagree. The basis of the Riddles' claim against Dr. Khan is that he recommended prescribing certain

medications for M.R.'s mental health treatment without their prior consent, thereby, damaging their parent-child relationship.

[24] The undisputed evidence shows Matthew Riddle was personally notified of M.R.'s hospitalization shortly after it began on December 30, 2016. Further, DCS attempted to contact the Riddles and their attorney after Dr. Khan had recommended prescribing Celexa for M.R.'s mental health conditions, and the juvenile court's January 5, 2017 order granting permission to administer Celexa to M.R. was served on the Riddles' counsel. It further appears the Riddles, or their counsel, were notified on or about January 11, 2017, that Dr. Khan had also recommended prescribing Buspar for M.R., and the juvenile court had granted DCS permission to administer that medicine to M.R. On February 8, 2017, the Riddles filed with the juvenile court a notice of their objection to the medications prescribed for M.R., stating that they were being deprived of their parental constitutional rights. This is undisputed evidence from which the trial court could have determined that the Riddles were aware of Dr. Khan's alleged violations, which fell outside the statute of limitations period, and their complaint was accordingly time-barred as to Dr. Khan.

[25] The Riddles argue that the statute of limitations does not bar their claims against Dr. Khan pursuant to the doctrine of continuing wrong. Under the continuing wrong doctrine, the statute of limitations is tolled "where an entire course of conduct combines to produce an injury." *Cyrus v. Nero*, 546 N.E.2d 328, 331 (Ind. Ct. App. 1989). The statute does not commence running until the course of conduct ends. *Id.* The doctrine of continuing wrong is not an

equitable doctrine; rather, it defines when an act, omission, or neglect took place. *Boggs v. Tri-State Radiology, Inc.*, 730 N.E.2d 692, 699 (Ind. 2000).

[26] The Riddles claim the continuing wrong at issue did not cease until at least April 17, 2018, when a panel of this Court reversed the juvenile court's original CHINS judgment. We disagree. It is undisputed that Dr. Khan's treatment of M.R. ended on or about January 11, 2017, and he had no further contact or involvement with M.R., Cress, DCS officials, juvenile court personnel, or state actors after that date. Whether M.R. took or continued to take the medications Dr. Khan had recommended prescribing for her was beyond his purview. Dr. Khan's acts were not part of a continuing wrong that extended the statute of limitations period as to him. *See id.* at 700 (doctrine of continuing wrong did not extend statute of limitations period for medical care provider; provider's care of victim was limited to interpreting two mammograms). The trial court did not err in granting Dr. Khan's motion for summary judgment.

[27] Doctor Scruton presents a related statute of limitations argument. Specifically, he argues that the Riddles' § 1983 claims are, in essence, repackaged, and untimely filed, medical malpractice claims. We need not determine whether the statute of limitations time period for personal injury or medical malpractice applies here, because: (1) the statute of limitations period for medical malpractice claims is also two years from the date of the alleged act, *see Ind. Code section 34-18-7-1 (1998)*; and (2) the discovery rule also applies to extend the statute of limitations period in certain medical malpractice cases. *See Booth v. Wiley*, 839 N.E.2d 1168, 1172 (Ind. 2005) (courts addressing the statute of

limitations in medical malpractice cases must determine the “discovery date,” which is the date the plaintiff learned or reasonably should have learned about the alleged malpractice).

[28] It is undisputed that Dr. Scruton provided medical care to J.R. starting from November 9, 2016, until June 26, 2017, and that he treated J.R. within the two-year statute of limitations period. Further, unlike in M.R.’s circumstances, Dr. Scruton points to no evidence that the Riddles were made aware prior to the expiration of the statute of limitations period that Dr. Scruton was treating J.R. Viewing the facts in the light most favorable to the Riddles, there is a dispute of material fact as to whether Dr. Scruton committed an alleged wrongdoing within the statute of limitations period, and as a result he is not entitled to summary judgment on the statute of limitations time period.⁴ However, our analysis does not end there.

[29] We first turn to the merits of the Riddles’ § 1983 claims against Doctors Chekkillla and Scruton. The dispositive question is whether there are disputes of material fact as to whether Doctors Chekkillla and Scruton acted under color of state law. The purpose of § 1983 is to deter state actors, and private individuals in collaboration with state officials, from using a badge of authority to deprive individuals of rights guaranteed by the constitution. *K.M.K. v. A.K.*,

⁴ Dr. Scruton also argues that, because the Riddles’ § 1983 claims against him are in essence medical malpractice claims, the claims are barred because the Riddles did not timely file a complaint with the Indiana Department of Insurance. We need not address this argument because we have resolved the appeal on other grounds.

908 N.E.2d 658, 662 (Ind. Ct. App. 2009) (quotation omitted), *trans. denied*.

For a private individual to act under color of law, there must be evidence of a concerted effort between a state actor and that individual. *Id.* To establish § 1983 liability through a conspiracy theory, a plaintiff must demonstrate: (1) a state official and private individual(s) reached an understanding to deprive the plaintiff of his constitutional rights, and (2) those individual(s) were willing participants in joint activity with the State or its agents. *Id.*

[30] We turn to the evidence regarding Dr. Chekkill. The Riddles do not dispute that Dr. Chekkill worked for a private company, was not an employee of the State, and did not have any contact with DCS or juvenile court personnel. Further, it appears that Cress, who had legal custody and care of M.R., chose to take M.R. to Dr. Chekkill's office on her own initiative to establish primary health care on behalf of M.R. There is no evidence that anyone at DCS directed, encouraged, or suggested that Cress select Dr. Chekkill to provide medical care to M.R. In addition, there is no evidence that the doctor, prior to the presentation of M.R. for medical treatment, had ever met Cress, M.R., juvenile court personnel, or any DCS official involved in M.R.'s case. Finally, there is no evidence that Dr. Chekkill played any role in M.R.'s removal from the Riddles' care or her placement with Cress.

[31] When Cress presented M.R. at Dr. Chekkill's office for a medical examination, Cress displayed written documentation from DCS dated September 27, 2016, which stated that Cress was authorized to seek medical care on behalf of M.R. During the examination, M.R. revealed that she was

experiencing long, heavy, and painful menstrual periods, and her symptoms were getting worse. Subsequently, Dr. Chekkilla diagnosed M.R. with Dysmenorrhea, entailing heavy bleeding and severe pain. After completing the medical examination of M.R., and based on the applicable standard of care, Dr. Chekkilla refilled M.R.'s prescriptions for Celexa and Buspar and further recommended a hormone medication called Levora for the treatment of M.R.'s very painful Dysmenorrhea.

[32] Dr. Chekkilla did not consult with any DCS officials before or during the examination. She later wrote a letter explaining why M.R. should be treated with Levora and stating that she was not recommending the medication for birth control purposes. DCS then submitted the information to the juvenile court for its approval of the treatment for M.R., and Dr. Chekkilla played no part in the court proceedings. In summary, there is no evidence the doctor spoke with DCS or other state officials, let alone reached an understanding with state officials to deprive the Riddles of their constitutional rights. Further, the Riddles have not designated or presented any evidence to refute or rebut the standard of medical care rendered by Dr. Chekkilla to M.R. or to show any involvement by her in the trial court proceedings.

[33] The Riddles further argue Dr. Chekkilla was a state actor because: (1) DCS had presented to the juvenile court the letter the doctor explaining why she had prescribed Levora; (2) the doctor's office accepted M.R. as a patient with the knowledge she was the subject of a DCS proceeding; and (3) Dr. Chekkilla's employer, Community Physician Services, has provided services to DCS under

contract in Indiana. None of these facts are relevant to demonstrate a common understanding between the doctor and DCS or any other state actor to sustain a violation of the Riddles' parental constitutional rights. The trial court did not err in granting summary judgment to Dr. Chekkilla. *See K.M.K., 908 N.E.2d at 663* (private attorney did not qualify as state actor for purposes of § 1983; merely petitioning a trial court for relief did not amount to conspiring with a state official to violate a person's constitutional rights). The Riddles have not presented or designated any evidence to establish that Dr. Chekkilla was a State employee or that she conspired or joined with any State officials to deprive the Riddles of their constitutional rights of any kind. Mere assertions of harm or deprivation of rights, without more, cannot withstand a motion for summary judgment.

[34] Turning to Dr. Scruton's treatment of J.R., the Riddles do not dispute that the doctor worked for a private company. Further, the record does not contain evidence of any communications between the doctor and DCS's officials, juvenile court personnel, or other state actors. In his summary judgment documents, Dr. Scruton stated only that he regularly treated J.R. beginning on November 9, 2016, until June 26, 2017. In response, the Riddles did not present or designate any evidence demonstrating that DCS staff selected Dr. Scruton as J.R.'s psychologist or otherwise worked in concert with the doctor in his treatment of J.R. We must affirm a grant of summary judgment on any evidence in the record, and there is no material evidence showing that Dr.

Scruton joined or conspired with DCS to deprive the Riddles of their constitutional rights.

[35] In addition, there are also no disputes of material fact as to whether Dr. Scruton deprived the Riddles of a constitutionally protected right. There is no evidence that he played any role in the removal of J.R. from the Riddles' custody. Further, the Riddles did not designate any evidence in the form of affidavits witnesses, admissions, depositions, or otherwise, to show that they expressed disagreement with Dr. Scruton's treatment of J.R.; that his treatment did not meet the applicable standard of care; or any evidence of how the doctor's treatment damaged their parent-child relationship with J.R. The trial court did not err in granting summary judgment to Dr. Scruton.

Conclusion

[36] For the reasons stated above, we affirm the judgment of the trial court.

[37] Affirmed.

Bradford, C.J., and Weissmann, J., concur.