MEMORANDUM DECISION

ATTORNEYS FOR APPELLANTS

Patrick A. Shoulders
Robert L. Burkart
Ziemer, Stayman, Weitzel & Shoulders, LLP
Evansville, Indiana

ATTORNEYS FOR APPELLEES

Ashley N. Hadler
S. Reese Sobol II
Garau Germano, P.C.
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Evansville Vanderburgh School Corporation and Scott Elementary School,

Appellants-Defendants,

and

Justin J. Wolf,

Defendant,

v.

John Doe I and Jane Doe, Individually and on behalf of their minor child, John Doe II,

Appellees-Plaintiffs

October 10, 2023

Court of Appeals Case No. 23A-CT-500

Interlocutory Appeal from the Vanderburgh Superior Court

The Honorable Thomas A. Massey, Judge

Trial Court Cause No. 82D07-2203-CT-963

Memorandum Decision by Judge Crone
Judges Weissmann and Felix concur.

Crone, Judge.

Case Summary

[1] In this interlocutory appeal, Evansville Vanderburgh School Corporation and Scott Elementary School (jointly EVSC) challenges the denial of its summary judgment motion as to the claims of John Doe I (Father) and Jane Doe (Mother), (jointly Parents), the parents of John Doe II (Son). We reverse.[1]

Facts and Procedural History

[2] The designated evidence most favorable to the Parents shows that around October 2017, Parents noticed a substantial change in the behavior of Son, a third grader at Scott Elementary School. At first, the behavior included bedwetting, soiling his clothing, and wearing multiple shirts and underwear to school; however, it gradually worsened over the next few years.

[3] In February 2018, Parents transferred Son and his younger brother (Brother) to Good Shepherd, a non-EVSC school. That same month, Justin J. Wolf, a Scott Elementary third grade teacher, was arrested and charged with three counts of level 4 felony child molesting and one count of level 6 felony sexual battery of an EVSC student. Shortly after Wolf's arrest, EVSC sent an automated phone

[1] Pursuant to the discretion afforded us by Indiana Appellate Rule 52(A), we deny EVSC's motion for oral argument via separate order.

message to all parents/guardians notifying them of a meeting regarding Wolf and requesting their attendance. At the meeting, Parents were informed about Wolf's arrest, given instructions regarding how to speak with their children about it, and encouraged to come forward if they learned of similar acts with other children. Following the meeting, Parents spoke with Son, whose teacher had been Wolf, and with Brother. Son and Brother denied that anything inappropriate had occurred.

[4] The move to Good Shepherd did not improve Son's behavior, which escalated in concerning ways. His sleep habits changed, and he made casual comments about killing himself on several occasions. He also acted out maliciously toward Brother, exhibited a worsening attitude toward school, had tantrums at home, and ran away several times.

[5] During the summer of 2018, Son seemed depressed, did not get along with friends, had increased temper tantrums, and often refused to go to bed. During that same summer, Wolf pled guilty to sexual battery. In August 2018, Son and Brother returned to Good Shepherd. Son's behavior worsened, with frequent referrals, detentions, arguments, and fights about homework and attending school. By then, Son was seeing a therapist and was medicated for ADHD and depression.

[6] By October 2018, Good Shepherd was calling Parents three to four times per week regarding Son's disciplinary issues. Son routinely fought not to attend school, with one particularly volatile exchange requiring the school principal's

assistance. Son's medication levels were increased, and he began to refuse medication. On one occasion, Mother struggled to administer medication to Son, who later told his therapist that Mother tried to strangle him. An investigation by the Indiana Department of Child Services (DCS) ensued, and in late October, Son was placed at "Crosspoint Psych Ward for five days after he made a suicide threat." Appellants' App. Vol. 2 at 60 (Mother's affidavit).

[7] Son returned to Good Sheperd, and his behavior escalated. He frequently accused school officials of abusing or hurting him when he was being disciplined. By December 2018, Son had become more violent, which necessitated the creation of a safety plan for Brother. When, thereafter, Son physically attacked Parents, they moved Brother and their third child "out of the house to keep them safe from [Son]." *Id*. Following another violent outburst, Parents committed Son to a children's psychiatric hospital in Utah.

[8] After a five-week stay at the Utah hospital, Son returned home in February 2019. Parents reenrolled him at Scott Elementary. Son's behavior worsened to the point where school officials contacted Parents and encouraged them to explore online education or a tutor. Parents investigated Intermountain, a Montana school for troubled children.

[9] On March 19, 2019, Son "had a blowup and the [Scott Elementary] teacher had to clear the classroom of students out of concern for everyone's safety." *Id.* at 61. Mother picked him up, brought him home, and sent him back the next day. Again, he acted up, necessitating that Mother retrieve him. During their drive

home, Son broke down, cried, and stated for the first time that Wolf had abused him. Per instructions from the February 2018 EVSC meeting, Mother scheduled an interview for Son at Holly's House[2] the next day and alerted Scott Elementary to Son's allegation. On March 21, 2019, a Holly's House employee interviewed Son while a local police detective and a DCS case manager observed. *Id*. at 73. After the interview, the detective and the DCS case manager expressed to Parents disbelief about the allegations and noted that losing a teacher can cause behaviors in children. *Id*. at 73-74. The interviewer told them that she "was 95% sure nothing happened." *Id*. at 62. Wolf did not speak with DCS, and no charges were filed. *Id*. at 74-75. Parents were extremely upset with Son for fabricating allegations, though he continued to insist that the abuse had occurred. *Id.* at 62, 68.

[10] At the end of March 2019, Parents sent Son to Intermountain in Montana. Parents made monthly visits, and Son seemed to be doing well. However, by late November 2019, Son's behavior declined to the point where Parents were not permitted overnight visits. In December 2019, Parents received an email from Intermountain informing them that Son had reported additional details about Wolf's sexual abuse. The disclosure was reported to DCS. Son's behavior worsened during the next couple of months.

[2] Holly's House is a non-residential child and adult victim advocacy center located in Evansville.

[11] In February 2020, Father visited Son at Intermountain, and Son disclosed more details regarding his abuse by Wolf. Father reported those details to DCS and attempted to explain Son's reluctance to report during the prior investigation. Father stated that Son "had just been diagnosed with [a]utism prior to" the interview during the first DCS investigation. *Id*. at 77. Father also explained that Wolf had threatened to harm Son's family if he disclosed the abuse and that Son erroneously feared that the prior interviewer's earpiece and cameras might lead to Wolf learning that Son had done so. *Id.* at 77, 81. Working with Montana authorities, DCS conducted a second investigation, including a March 12, 2020 interview of Son. As was the case during the first investigation, Wolf did not speak with investigators or provide a statement. *Id*. at 92. In early April 2020, DCS again found Son's allegations of sexual abuse by Wolf to be unsubstantiated.[3]

[12] Having been discharged from Intermountain the day after his DCS interview, Son was back home, where his behavior quickly spiraled downward. In July 2020, Parents enrolled him in Calo, a residential treatment facility in Missouri. In September 2020, "[w]hile at Calo, [Son] disclosed additional, specific details about his abuse that [Parents] were made aware of, including a very specific

---

[3] In finding Son's sexual abuse allegations unsubstantiated once again, DCS concluded, inter alia, that Son's discipline records did not support "that his behaviors started after having Mr. Wolf in [his third grade] class." *Id.* at 79. The DCS report's assessment section stated: "Discipline: Records indicate [Son] had behavior issues starting towards the end of 2nd grade (2016-2017 school year). He had 'disruption,' 'unsafe phy' behaviors, and parent conference in May 2017, the end of his 2nd grade." *Id.* Indeed, subsequent records (from Calo facility) stated that Son "has had lifetime difficulty with accepting limits and consequences and with tolerating when things do not go as he prefers." *Id*. at 103.

trigger for [Son] that created a logical link to [Wolf]." *Id.* at 63. In Calo therapy, Son further discussed how the sexual abuse trauma negatively affected his relationship with Parents, how Wolf threatened to hurt his family if he told, and how frustrated and overwhelmed he became keeping his trauma inside to protect his family. *Id.* at 101-02. Around this time, Parents "began to accept" that Son was being truthful about the sexual abuse allegations, which were "consistent and specific," and, unlike other unfounded allegations that Son had made against other authority figures, persisted after Son's outbursts. *Id.* at 63. Parents "realized that the sexual abuse he suffered likely was the cause of his drastic downward spiral in behavior." *Id.* Parents retained counsel and gathered information. For the first time, Parents obtained copies of Son's therapy, Intermountain, and Calo records, which "confirmed [Parents'] suspicions." *Id.* at 63, 64, 70.

[13] On February 1, 2021, Parents served EVSC with a tort claim notice. In a March 11, 2022 negligence complaint against EVSC and Wolf, Parents alleged that Wolf abused Son on multiple occasions between August 9, 2017, and February 8, 2018. Parents also alleged that EVSC's various failures caused Parents to suffer negligent infliction of emotional distress, loss of Son's services and consortium, lost time and wages, the incurrence of legal and other expenses, and future losses. *Id.* at 18. Parents also made claims on Son's behalf. In May 2022, EVSC filed its answer, including multiple affirmative defenses. In an October 2022 motion for summary judgment, EVSC argued that Parents filed

an untimely tort claim notice, which barred their claim. In January 2023, Parents filed a response as well as designated materials, and EVSC filed a reply.

[14] On February 15, 2023, the trial court held a hearing regarding the summary judgment motion. In an order denying EVSC's motion, the court found that Parents' February 1, 2021 "written tort claim notice to EVSC was timely, given the unique facts and circumstances of this case." Appealed Order at 3. Other pertinent findings include the following:

> 5. As a complicating matter, throughout this process the son had made repeated false allegations of physical abuse toward his parents and other authority figures. Thus, the parents could not reasonably rely upon the accuracy of the sexual abuse allegations made by their autistic son.
>
> ….
>
> 7. Parents enrolled their son in a new residential treatment program in Missouri called Calo in July 2020. While at Calo in September 2020, son provided additional and more specific details of sexual abuse he suffered from Defendant Wolf. Son expressed desire to work through his sexual abuse trauma with his parents. At this time, parents first accepted their [son's] allegations of sexual abuse to be true. This was the date of the parent's discovery of the tortious acts of Defendant Wolf. [Parents'] written tort claim notice was sent by certified mail on February 1, 2021, approximately 153 days from September 1, 2020.

Id. at 3-4.[4] EVSC filed this interlocutory appeal.[5]

Discussion and Decision

[15] EVSC challenges the trial court's denial of its summary judgment motion and contends that "this case should proceed forward only on the claims" of Son. Appellants' Br. at 16. "The purpose of summary judgment is to terminate litigation about which there can be no factual dispute and which can be determined as a matter of law." *Lamb v. Mid Ind. Serv. Co.*, 19 N.E.3d 792, 793 (Ind. Ct. App. 2014). "The party moving for summary judgment has the burden of making a prima facie showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Mint Mgmt., LLC v. City of Richmond*, 69 N.E.3d 561, 564 (Ind. Ct. App. 2017); Ind. Trial Rule 56(C). Summary judgment is a "high bar" for the moving party to clear in Indiana. *Hughley v. State*, 15 N.E.3d 1000, 1004 (Ind. 2014). If "the moving party satisfies this burden through evidence designated to the trial court, the non-moving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial." *Biedron v. Anonymous Physician 1*, 106 N.E.3d 1079, 1089 (Ind. Ct. App. 2018) (quoting *Broadbent v.*

---

[4] In its order denying summary judgment, the trial court also found that Parents "substantially complied with the notice requirement to EVSC" in March 2019 when they alerted Scott Elementary of Son's allegation. Appealed Order at 2, 3. However, Parents did not at the trial level, and do not on appeal, raise a substantial compliance argument. Appellee's Br. at 6 n.1. Given Indiana Code Section 34-11-2-4's two-year statute of limitation, Parents' decision not to assert substantial compliance is unsurprising. We do not discuss or decide an unraised substantial compliance argument.

[5] Though we include Wolf on the caption page, he does not participate in this appeal. Further, the attorneys listed on the caption page do not represent Wolf.

Fifth Third Bank, 59 N.E.3d 305, 311 (Ind. Ct. App. 2016), *trans. denied*), *trans. denied* (2019). "A fact is material if its resolution would affect the outcome of the case, and an issue is genuine if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences." *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (citation and quotation marks omitted). We are not bound by the trial court's findings of fact and conclusions thereon, though they aid our review by providing the reasons for the trial court's decision. *Howard Cnty. Sheriff's Dep't & Howard Cnty. 911 Commc'ns v. Duke*, 172 N.E.3d 1265, 1270 (Ind. Ct. App. 2021), *trans. denied*.

[16] "We review a court's ruling on a summary judgment motion de novo, applying the same standard as the trial court." *Mann v. Arnos*, 186 N.E.3d 105, 114 (Ind. Ct. App. 2022), *trans. denied*. "In conducting our review, we consider only those matters that were designated to the trial court during the summary judgment stage." *Lowrey v. SCI Funeral Servs., Inc.*, 163 N.E.3d 857, 860 (Ind. Ct. App. 2021), *trans. denied*. "In determining whether issues of material fact exist, we neither reweigh evidence nor judge witness credibility [but] accept as true those facts established by the designated evidence[.]" *Id.* (citations omitted). "Any doubts as to any facts or inferences to be drawn from those facts must be resolved in favor of the nonmoving party." *Denson v. Est. of Dillard*, 116 N.E.3d 535, 539 (Ind. Ct. App. 2018). "Under our standard, summary judgment may be precluded 'by as little as a non-movant's mere designation of a self-serving affidavit' because we prefer 'letting marginal cases proceed to trial on the

merits.'" *Abbott v. State*, 183 N.E.3d 1074, 1079 (Ind. 2022) (quoting *Hughley*, 15 N.E.3d at 1003). However, "[m]ere speculation is insufficient to create a genuine issue of material fact to defeat summary judgment." *Biedron*, 106 N.E.3d at 1089. The party that lost in the trial court bears the burden of persuading us that the trial court erred. *Id*.

[17] The Indiana Tort Claims Act (ITCA) bars "a claim against a political subdivision" unless notice of the claim is filed with the "governing body" within 180 days "after the loss occurs." Ind. Code § 34-13-3-8(a). The ITCA defines loss as "injury to or death of a person or damage to property." Ind. Code § 34-6-2-75(a). The ITCA notice "must describe in a short and plain statement the facts on which the claim is based[,]" including "the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought," and the claimant's residence. Ind. Code § 34-13-3-10. Although the 180-day notice requirement "is a procedural precedent, it is similar in its operation and effect to a statute of limitations." *Town of Cicero v. Sethi*, 189 N.E.3d 194, 211 (Ind. Ct. App. 2022), *trans. denied*; *see also Morgan v. Benner*, 712 N.E.2d 500, 502 (Ind. Ct. App. 1999) (noting that statutes of limitation "are enacted upon the presumption that one having a well-founded claim will not delay in enforcing it"), *trans. denied*. While compliance with the ITCA is often a question of law, it may be a question that turns on disputed facts. *See Lyons v. Richmond Cmty. Sch. Corp.*, 19 N.E.3d 254, 260 (Ind. 2014) ("summarily affirm[ing] that portion of [*Lyons v. Richmond Cmty. Sch. Corp.*, 990

N.E.2d 470 (Ind. Ct. App. 2013)] concluding material issues of fact remain as to whether the discovery rule should apply to excuse the Lyonses' noncompliance with the ITCA notice requirement").

[18] For purposes of the discovery rule, a "loss is said to occur, '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.'" *Reed v. City of Evansville*, 956 N.E.2d 684, 691 (Ind. Ct. App. 2011) (quoting *Wehling v. Citizens Nat'l Bank*, 586 N.E.2d 840, 843 (Ind. 1992)) *trans. denied*; *see also Irwin Mortg. Corp. v. Marion Cnty. Treasurer*, 816 N.E.2d 439, 447 n.8 (Ind. Ct. App. 2004) (applying discovery rule to determine when loss occurred for purposes of ITCA tort claim notice). "Our supreme court has clarified that a claim subject to the discovery rule accrues when a plaintiff is informed of a 'reasonable possibility, if not a probability' that an injury was sustained as a result of the tortious act of another, and that a person's 'mere suspicion or speculation' as to causation of an injury is insufficient to trigger accrual." *Reed*, 956 N.E.2d at 691 (citing *Degussa Corp. v. Mullens*, 744 N.E.2d 407, 411 (Ind. 2001)). The discovery rule "is based on the reasoning that it is inconsistent with our system of jurisprudence to require a claimant to bring his cause of action in a limited period in which, even with due diligence, he could not be aware a cause of action exists." *Barnes v. A.H. Robins Co.*, 476 N.E.2d 84, 86 (Ind. 1985). Exercising reasonable diligence means that an injured person "must act with some promptness where the acts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his

has been invaded or that some claim against another party might exist." *Bambi's Roofing, Inc. v. Moriarty*, 859 N.E.2d 347, 356 (Ind. Ct. App. 2006) (citing *Perryman v. Motorist Ins. Co.*, 846 N.E.2d 683, 689 (Ind. Ct. App. 2006)).

[19] In its original summary judgment motion and supporting memorandum, EVSC argued that Parents should have filed their ITCA notice by early August 2018, which was within 180 days of the last possible date of abuse (given that in February 2018, Wolf was arrested and terminated, and Son switched schools). Alternatively, EVSC argued that even applying the discovery rule, the 180-day ITCA clock would have started running in March 2019, when Son first told Mother that he was abused, and she contacted Scott Elementary. Thus, EVSC maintained that Parents' tort claim should have been filed by September 2019 rather than on February 1, 2021.

[20] Parents responded that summary judgment against them would be inappropriate because there was a "genuine dispute of material facts related to EVSC's untimely tort claim defense." Appellants' App. Vol. 2 at 54. Parents "designated evidence showing that they could not have discovered the existence of their claim until late September of 2020, and therefore, a reasonable factfinder could find that their [February 1, 2021] notice of tort claim was timely [within 180 days of September 2020] under the discovery rule." *Id.* Parents maintained that September 2020 was the discovery date because that was when Son disclosed particular details about his abuse, the very specific trigger creating a logical link to Wolf, and how the sexual abuse trauma negatively affected his relationship with Parents. Parents further asserted that

after discovering the existence of their claim, they "exercised reasonable diligence in pursuing that claim and filing a tort claim notice." *Id.*[6]

[21] In its reply to Parents' response and on appeal, EVSC stresses that Indiana's application of the discovery rule is objective. EVSC argues that Parents "chose to believe Son" in September 2020, but that such a choice is subjective and does not control when their claim accrued under the discovery rule. *Id*. at 106. EVSC contends that Parents knew of Son's abuse allegations, Wolf's guilty plea, Son's worsening behavior, and the emotional and financial consequences of Son's behaviors. EVSC concludes that, armed with this information, a "reasonable person would have known between March 2019 and February 2020 (the period of Son's repeated communications of abuse to parents and others) of a reasonable possibility that the emotional and financial consequences of Son's behavioral changes were sustained as a result of Defendant Wolf's alleged abuse of Son." Appellants' Reply Br. at 7.

[22] We agree that Indiana has utilized an objective standard for the application of the discovery rule. *See Doe v. United Methodist Church*, 673 N.E.2d 839, 844 (Ind. Ct. App. 1996), *trans. denied* (1997), and *Fager v. Hundt*, 610 N.E.2d 246, 250-51 (Ind. 1993). *Doe* involved a young woman (Doe) who between the ages of sixteen and twenty was sexually abused by a married minister. Thereafter, Doe

---

[6] In their response to EVSC's summary judgment motion and memorandum, Parents also raised fraudulent concealment as a possible justification for noncompliance with the ITCA's 180-day notice period. On appeal, neither party discusses this theory, and we do not address it.

suffered emotionally and mentally and received substantial therapy yet did not file suit against the church until five years after the abuse ended. Reiterating that Doe was twenty when the abuse ceased, a panel of this Court determined that it was "not possible that a reasonable person in Doe's position would not have understood, on some level, that Minister's actions were wrong and had some connection to her current situation." 673 N.E.2d at 844. *Fager* involved the repressed memory of a woman who at age thirty-six discovered sexual abuse by her father that last occurred when she was thirteen or fourteen years of age. Our supreme court held that the "'discovery' of a cause of action by a child's parent, even absent actual cognition or memory by the child, shall be imputed to the child and shall conclusively constitute the accrual of an action within the meaning of" the disability statute applicable at the time, "thus allowing the minor two years after reaching majority within which to commence suit." 610 N.E.2d at 251.[7]

[23] Here, we accept as true the facts established by the designated evidence, resolve any doubts in favor of the Parents as the nonmoving party, and observe that in March 2019, Son tearfully first informed Parents that Wolf abused him. We further observe that within one day, Parents reported Son's allegation to Scott Elementary and set up an interview with Holly House. By the time that Son first told Parents of the abuse, Parents already knew that (1) Wolf had been

[7] Our supreme court then outlined an exception to its rule where, as in *Fager*, the plaintiff's claim asserted childhood injury from the intentional felonious act of a parent. 610 N.E.2d at 251.

Son's teacher from the fall of 2017 through the early part of 2018; (2) Son's behavior had substantially changed starting in October 2017; (3) Wolf had been charged with sexual abuse of another student and pled guilty; and (4) Son's spiraling behavior led to cascading negative ramifications in the family. Using an objective standard for the application of the discovery rule, it is not possible that a reasonable person in Parents' position would not have understood on some level in March 2019 that the alleged abuse had some connection to Son's behavioral changes and the attendant emotional and financial effects. Rather, at that point, Parents were informed of a reasonable possibility, if not a probability, that their emotional and financial injuries were sustained as a result of the tortious act(s) of EVSC and Wolf. Stated otherwise, by March 2019, a person of common knowledge and experience would have been placed on notice that some right of his had been invaded or that some claim against another party might exist. Accordingly, per the discovery rule, Parents' claims accrued, and the ITCA's clock began to run, in March 2019. Consequently, Parents' February 1, 2021 notice was filed well beyond the ITCA's 180-day period.[8] Because no genuine issue of material fact exists as to when the claims accrued or the untimeliness of Parents' tort claim notice, summary judgment in favor of EVSC should have been granted as to Parents' claims. In reaching our

[8] Parents' ITCA notice would have been untimely even if February 2020 (by which time continued allegations and related distress and expenses had occurred) had been deemed the discovery date for claim accrual purposes.

conclusion, we clarify that Son's individual claims are unaffected by our decision.

[24] Reversed.

Weissmann, J., and Felix, J., concur.