Circuit Court for Prince George's County
Case No. CAL17-39109

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 849

September Term, 2018

TERRENCE SHEPHERD

v.

DOCTOR'S COMMUNITY HOSPITAL AND DOCTORS EMERGENCY PHYSICIANS

Meredith,
Graeff,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: June 24, 2019

This appeal concerns the dismissal of a complaint for personal injuries a hospital security guard allegedly sustained when he was attacked by a patient. The issue is whether the statutory time limit for filing a claim against a health care provider for a medical injury is tolled by the filing of a complaint in the circuit court.

On December 4, 2013, Terrence Shepherd ("Mr. Shepherd"), appellant, was working as a security guard at Doctor's Community Hospital ("the Hospital"), one of the appellees. At approximately 9:00 p.m., Mr. Shepherd came to the aid of a patient care technician who was being physically assaulted by a patient ("Mr. G."). The patient turned his attention to Mr. Shepherd and began to choke him while threatening to kill him. In the skirmish, Mr. Shepherd sustained physical injuries.

On October 25, 2016, Mr. Shepherd filed suit in the Circuit Court for Prince George's County against the Hospital, as well as Doctors Emergency Physicians ("Emergency Physicians," the second appellee in this appeal), and other health care providers who are no longer parties in this litigation. The suit alleged that the Hospital and Emergency Physicians had been negligent in failing to properly assess and determine the mental status of Mr. G., and in failing to properly monitor and restrain an unstable, violent patient, which was the proximate cause of the injuries sustained by Mr. Shepherd. The appellees moved to dismiss the complaint, asserting that the complaint alleged medical injury within the scope of Maryland's Health Care Malpractice Claims Act ("the Health Care Claims Act"), codified in Maryland Code (1976, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 3-2A-01, *et seq.* That Act mandates that claims

against a health care provider seeking damages (if the amount claimed is in excess of the concurrent jurisdiction of the District Court) for a "medical injury" (as defined in the Act) must first be filed with the Health Care Alternative Dispute Resolution Office ("HCADRO"). *See* CJP § 3-2A-04(a). Because Mr. Shepherd had not filed his claim with the HCADRO, the appellees asserted that the court was obligated to dismiss the complaint for failure to comply with the Health Care Claims Act. The circuit court agreed, and dismissed the complaint without prejudice on August 15, 2017. Mr. Shepherd did not appeal the circuit court's ruling that his 2016 complaint must be dismissed for failure to comply with the Health Care Claims Act.

On August 29, 2017, Mr. Shepherd filed a Statement of Claim with the HCADRO, seeking damages for the same incident and injuries that had been the subject of his first complaint in the circuit court. He subsequently waived arbitration (as permitted by the Health Care Claims Act, CJP § 3-2A-06B(b)), and then, on December 4, 2017, he filed his second complaint (the "2017 complaint") in the Circuit Court for Prince George's County. The Hospital and Emergency Physicians again filed motions to dismiss, this time asserting that the suit was filed after the statute of limitations applicable to claims against health care providers, set forth in CJP § 5-109(a), had expired on December 4, 2016. The circuit court agreed, and dismissed Mr. Shepherd's 2017 complaint. This appeal followed.

QUESTION PRESENTED

In this appeal, Mr. Shepherd presents a single question:

> Did the circuit court err when it determined Mr. Shepherd's claim should not be equitably tolled, despite the confusion as to whether his injury was a medical injury or not a medical injury?[1]

Perceiving no error, we shall affirm the judgment of the circuit court.

PROCEDURAL BACKGROUND

When Mr. Shepherd first filed suit against the Hospital and Emergency Physicians in 2016, he sought damages for the same incident that formed the basis of the complaint he filed in 2017 which is the subject of the present appeal. In ruling upon the argument of the Hospital and Emergency Physicians that the 2016 complaint should be dismissed because it sought damages from health care providers for a medical injury, and therefore, could not proceed until a claim had first been filed with the HCADRO, the circuit court summarized the 2016 complaint as follows:

> According to Plaintiff, Doctors Hospital, under the theory of agency, and the [Emergency Physicians] employed by Doctors Hospital[,] were negligent in providing the reasonable standard of care in the treatment of [Mr. G.]. Specifically, Plaintiff's Complaint alleges that Defendant[s] Doctors Hospital and Emergency Physicians failed: (1) ". . . to correctly identify the reason that Mr. [G.] was presenting to the emergency room . . ."; (2) ". . . to make a determination as to the mental status of Mr. [G.] when he entered the emergency room . . . to ensure he was in the correct type of medical facility . . ."; (3) "to assess the threat Mr. [G.] posed to everyone on the premises to properly transfer Mr. [G.] to the correct type of medical facility based on his mental state . . ."; (4) ". . . to assess the threat Mr. [G.] posed to everyone on the premises to search for the correct type of

[1] The term "medical injury" is defined in CJP § 3-2A-01(g) as follows: "'Medical injury' means injury arising or resulting from the rendering or failure to render health care."

medical facility to transfer Mr. [G.] who was in need of psychological care . . .”; (5) “. . . to assess the threat Mr. [G.] posed to everyone on the premises [sic] search for available beds in a psychiatric hospital for Mr. [G.] . . .”; (6) “. . . to determine whether Mr. [G.] had a psychiatric condition . . .”; (7) “. . . to collect information needed to properly assess Mr. [G.]’s condition and state of mind . . .”; (8) “. . . to interview Mr. [G.] to obtain relevant information to assess the threat of Mr. [G.]. . .”; (9) “. . . to send Mr. [G.] to a psychiatric hospital equipped to handle his condition . . .”; (10) “. . . to, if Mr. [G.] was admitted, follow the proper protocols to safely monitor and have restrained an unstable, violent or aggressive patient . . .”; and (11) “. . . to properly monitor Mr. [G.] . . . .” [Paragraph citations omitted.]

From the plain meaning of the words in Plaintiff’s complaint, it is evident that Plaintiff’s claims allege a medical injury caused by the defendant health care providers while exercising their professional duties, such as proper assessment of [Mr. G.]’s mental and physical medical condition, conducting the necessary and appropriate examinations of [Mr. G.], and adequately monitoring the treatment of [Mr. G.]. All of these deficiencies, Plaintiff[] allege[s], resulted in his injury.

The Court will also look to the oral argument of counsel for the intent of the pleading. *Jewell v. Malamet*, 322 Md. 262, 274-75 (1991) (in the absence of a concession of a lack of medical validity in the actions of the health care provider, the Act is inapplicable). As counsel for Emergency Physicians noted, if Plaintiff’s allegations were solely based on premises liability, none of the [individual] doctors would have been named as defendants in the case. In addition, Plaintiff noted Dr. Justin Ramsdell as an expert witness. At trial, Dr. Ramsdell “will testify as to the relevant standard of care for admitting patients with psychiatric complaints and security policies and practices when admitting patients to medical care facilities, **along with hiring, training, and supervision of employees** in conformance with those policies.” (emphasis added). Motions hearing Def. Exhibit #1.

The Court’s analysis focuses on whether a claim must be filed before HCADRO prior to maintaining a circuit court action. The claims alleged are to be broadly interpreted to mean the “. . . aggregate of operative facts giving ground or occasion for judicial action, as distinguished from the narrow concept of a ‘cause of action.’” *Lerman v. Heeman*, 347 Md. 439, 448 (1997) (citation omitted). The facts surrounding Plaintiff’s allegations; the doctors, collectively named as a defendant in this action; and Plaintiff’s intent to call an expert witness who will testify regarding the doctors’

> standard of care are tantamount to a claim of medical malpractice, despite Plaintiff's assertion of premises liability. Therefore, this Court lacks subject matter jurisdiction for all claims against Doctors Hospital and Emergency Physicians.

(Underlining added.)

The court dismissed the 2016 complaint without prejudice, and ordered that Mr. Shepherd's "claims must first be filed with the Health Care Alternative Dispute Resolution Office before this Court maintains [sic] subject matter jurisdiction." The August 15, 2017 order dismissing the 2016 complaint was not appealed, and, therefore, became a final judgment.

After Mr. Shepherd filed his claim with the HCADRO and waived arbitration, he filed a second, substantially similar complaint in the Circuit Court for Prince George's County on December 4, 2017. The Hospital and Emergency Physicians again moved to dismiss. This time, they argued that the 2017 complaint had been filed after the applicable statute of limitations had expired (a year earlier, on December 4, 2016). Mr. Shepherd urged the court to extend and apply the holding of *Swam v. Upper Chesapeake Medical Center, Inc.*, 397 Md. 528 (2007), a case in which the Court of Appeals permitted a claim that had been initially filed incorrectly with HCADRO — even though the alleged injury was not a "medical injury" as defined in the Health Care Claims Act — to proceed in circuit court, despite the fact that the general statute of limitations for civil claims, *i.e.*, CJP § 5-101, had expired by the time the Swams filed their complaint in the circuit court.

The circuit court was not persuaded to extend the holding of the *Swam* opinion beyond the facts of that case. The court observed in Mr. Shepherd's case:

> [C]ourts are required to enforce statutes of limitations as adopted by the Maryland General Assembly. "[W]here the Legislature has not made an exception in express words in the Statute of limitations, ***the Court cannot allow any implied and equitable exception*** **to be engrafted upon the statute** ***merely on the ground that such exception would be within the spirit or reason of the statute***." *Antar v. Mike Eagan Ins. Agency, Inc.*, 209 Md. App. 336, 343 (2012). [(Quoting *McMahan v. Dorchester Fert. Co.*, 184 Md. 155, 160 (1944))] ([Bold] emphasis supplied[; italics in original]).

The circuit court acknowledged that, in *Swam*, the Court of Appeals had held that a claim that had been timely (but incorrectly) filed with the HCADRO tolled the statute of limitations for filing in the circuit court a complaint that was determined to be not seeking damages for a "medical injury" as defined in the Health Care Claims Act.

But the circuit court in Mr. Shepherd's case also recognized that the Court of Appeals had not applied tolling in a more recent case that was more closely analogous to the procedural posture of this case. The circuit court explained that, in *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275 (2018), the Court of Appeals had held that a claim against a health care provider for medical injuries that had been incorrectly filed in the circuit court could not be filed with the HCADRO after the statute of limitations applicable to health care claims had expired. The circuit court stated:

> In *Davis*, the plaintiff filed a timely complaint in the circuit court for negligence and other related claims alleging injuries from a fall from a hospital bed while asleep and [also from] when the nurse improperly used a mechanical lift that caused a subsequent fall. The trial court granted the defendant's motion to dismiss[,] holding that the plaintiff's claims were a medical injury. . . .The Court of Appeals held that the plaintiff "did not allege that her fall from the bed resulted from the rendering of medical

> care." [457 Md.] at 294. Therefore, those claims are beyond the purview of [HCADRO]. Conversely, the other claims required "an examination of medical procedures regarding the proper operation of the lift—and whether the nurse properly followed these procedures—will be necessary to decide the veracity" of the plaintiff's claims and should have been have been filed in the [HCADRO]. *Id.* at 296. The Court of Appeals . . . [held] that the plaintiff could "no longer maintain her professional negligence claims in the [HCADRO] because her injuries occurred in 2011, and the three-year statute of limitations has expired." *Id*. at 298. Yet, the plaintiff could pursue the remaining claims [that were not for a medical injury] in the trial court. *Id*. . . .
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> . . . A timely filed claim with the [HCADRO] that is subsequently found not arising from a medical injury[] will toll the limitations period and may be filed in the court. *Swam*, 397 Md. at 531. In *Davis*, the Court of Appeals held that this reasoning does not apply conversely.
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> . . . Absent a finding of a judicial exception, which this Court does not [find], [Mr. Shepherd] is barred, as the statute of limitations period has expired.

This appeal followed.

STANDARD OF REVIEW

In *Advance Telecom Process LLC v. DSFederal, Inc*., 224 Md. App. 164, 173-74 (2015), we described the scope of our review of the grant of a motion to dismiss:

> "A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, 'the allegations do not state a cause of action for which relief may be granted.'" *Latty v. St. Joseph's Soc'y of the Sacred Heart, Inc.*, 198 Md. App. 254, 262–63, 17 A.3d 155 (2011) (quoting *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643, 994 A.2d 430 (2010)). The facts set forth in the complaint must be "pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC*, 413 Md. at 644, 994 A.2d 430.

> "'We review the grant of a motion to dismiss de novo.'" *Unger v. Berger*, 214 Md. App. 426, 432, 76 A.3d 510 (2013) (quoting *Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509, 880 A.2d 307 (2005)). *Accord Kumar v. Dhanda*, 198 Md. App. 337, 342, 17 A.3d 744 (2011) ("We review the court's decision to grant the motion to dismiss for legal correctness."), *aff'd*,426 Md. 185, 43 A.3d 1029 (2012). We will affirm the circuit court's judgment "'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385, 981 A.2d 822 (2009) (quoting *Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591, 665 A.2d 713 (1995)).

DISCUSSION

At the outset, we note that the question of whether the claims asserted by Mr. Shepherd sought damages for a "medical injury" arising out of the appellees' professional negligence as health care providers is *not* before us. That specific issue was decided in the prior ruling of the circuit court that dismissed Mr. Shepherd's 2016 complaint. When no appeal of that judgment was filed, the judgment became final, and the lack of any appeal precludes relitigation of that issue.

We agree with the circuit court's conclusion that the result in this case is dictated by the Court of Appeals's holding in *Davis*. There is no significant distinction between Mr. Shepherd's claims and the claims which were held to be barred by the statute of limitations in *Davis*. Although the *Davis* Court held that those of Davis's claims that did not assert professional negligence could proceed, the Court rejected Davis's argument that her claims asserting professional negligence on the part of her health care providers could proceed even though her statement of claim was not filed with HCADRO until after the applicable statute of limitations as set forth in CJP § 5-109(a) had expired. That

holding is fatal to Mr. Shepherd's argument that the claim of professional negligence he filed with HCADRO should be permitted to proceed even though it was not filed with HCADRO until after the statute of limitations as set forth in CJP § 5-109(a) had expired.

Mr. Shepherd urges this Court to hold that his initial filing of his first complaint in the circuit court in 2016 met the filing deadline imposed by CJP § 5-109(a) for health care claims. But that would be contrary to the holding in *Davis*, wherein the Court of Appeals rejected such a result in a unanimous opinion filed on January 19, 2018. The *Swam* case upon which Mr. Shepherd relies was discussed by the *Davis* Court, 457 Md. at 291-93, and the *Davis* Court acknowledged that it had held in *Swam* that a plaintiff's "initial filing in the ADR Office tolled the three-year general statute of limitations," *i.e.*, CJP § 5-101. *Id*. at 293. But, if the Court of Appeals had adopted Mr. Shepherd's argument that the statute of limitations for filing a claim against a health care provider for a medical injury — *i.e.*, CJP § 5-109(a) — also could be satisfied by filing a complaint in the circuit court (instead of filing a statement of claim with the HCADRO), the *Davis* Court would have held that Davis's claims of professional negligence had been timely filed. Instead, the *Davis* Court held that Davis's claims of professional negligence were barred by CJP § 5-109(a) even though she had filed a complaint asserting those claims in the circuit court before the time limit had expired. Similarly, Mr. Shepherd's claim against the appellees was filed with the HCADRO after the applicable statute of limitations had expired.

We conclude that the circuit court correctly applied the holding of *Davis*, and correctly dismissed Mr. Shepherd's complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.