IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ROCKLEDGE HMA, LLC, HEALTH MANAGEMENT ASSOCIATES, INC. OF DELAWARE, GARY D. NEWSOME, FLORIDA EMERGENCY SPECIALISTS, LLC, APOLLOMD PHYSICIAN SERVICES FL, LLC AND CHRISTOPHER HILL, M.D.,

Petitioners,

v.

Case No. 5D19-1223, 5D 19-1919, 5D19-1225, 5D19-1957

MICHAEL S. LAWLEY, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SHANNON C. LAWLEY AND PATRICIA LAWLEY,

Respondents.

_____/

Opinion filed May 29, 2020

Petition for Certiorari Review of Order from the Circuit Court for Brevard County, Charles J. Roberts, Judge.

Wilbert R. Vancol and Thomas E. Dukes, III, of McEwan, Martinez, Dukes & Hall, P.A., Orlando, for Petitioners, Florida Emergency Specialists, LLC, Appollomd Physicians Services FL, LLC., and Christopher Hill, M.D.

Michael R. D'Lugo and Richards H. Ford, of Wicker, Smith, O'Hara, McCoy & Ford, P.A., Orlando, for Petitioners, Rockledge HMA, LLC, Health Management Associates, Inc. of Delaware, and Gary D. Newsome.

Phillip M. Burlington, of Burlington & Rockenbach, P.A., West Palm Beach, Theodore Babbitt, of Babbitt & Johnson, P.A., West Palm Beach, and S. Sammy Cacciatore, Jr., of Nance, Cacciatore, Hamilton, Barger, Nance & Cacciatore, of Melbourne, for Respondents.

SASSO, J.

The issue presented by these consolidated petitions is whether a claim arising out of the alleged failure to complete a medically necessary transfer, as part of a scheme to increase admission rates for strictly financial reasons, sounds in medical malpractice. Because the claim raised here directly relates to medical care or services, which require the use of professional judgment or skill, we hold the trial court departed from the essential requirements of law when it determined the medical negligence standard of care is not implicated. As a result, we grant the petitions and quash the orders on review.

FACTS

On February 20, 2012, Shannon C. Lawley, the decedent, entered the emergency room ("ER") at Rockledge HMA, LLC, d/b/a Wuesthoff Medical Center Rockledge ("Wuesthoff"). Christopher Hill, M.D., the emergency medical physician, diagnosed the decedent with several medical issues and determined she required intensive care unit ("ICU") treatment. At the time the determination was made, Respondents allege that Petitioners knew Wuesthoff had no available ICU beds and that six other patients in the ER were also awaiting ICU beds. Respondents further allege other hospitals in the immediate vicinity of the ER had ICU beds available and could treat the decedent. However, instead of transferring the decedent, Dr. Hill admitted her and placed her in a

hallway in the Wuesthoff ER for over seven hours, where she ultimately became unresponsive and died.

Respondents sued, alleging that the decedent's admission was for "the sole purpose of generating hospital and/or physician revenue." The decision to admit rather than transfer the decedent, Respondents asserted, led to her being treated by an ER physician who caused her death. The Complaint was filed prior to Respondent initiating the pre-suit investigation process, which is required by Chapter 766, Florida Statutes (2014).

After several amendments, Respondents filed their Fifth Amended Complaint,[1] reasserting the allegations that Petitioners failed to transfer the decedent as a result of the scheme to increase admission rates for strictly financial reasons. Respondents attached a non-prosecution agreement Petitioners had reached with the federal government in which Health Management Associates, Inc., of Delaware ("HMAD") was prohibited from denying that it "executed a formal and aggressive plan to improperly increase overall emergency department inpatient admission rates at all HMA Hospitals." Respondents asserted that Petitioners did not attempt to transfer the decedent based on Petitioners' internal "policy and practice to maintain admissions for revenue generating purposes." Respondents alleged that the "failure of [Petitioners] to transfer Shannon Lawley so that she was treated by Dr. [Arnold] Kemp was the competent cause of her death."

[1] The Complaint alleged: (1) the "tort of outrage" as to all Petitioners, (2) fraud, (3) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and (4) Florida Deceptive and Unfair Trade Practices Act ("FDUPTA") violations.

Petitioners moved to dismiss the Complaint for failure to comply with the pre-suit requirements of Chapter 766. In support, Petitioners argued that even if the administrative policy to increase admissions for financial reasons was in place, Respondents' claims sounded in medical negligence. Petitioners further alleged the statute of limitations applicable to medical malpractice claims barred Respondents' claims against Petitioner Gary D. Newsome.

Ultimately, the trial court denied Petitioners' motions to dismiss. The trial court found that Respondents' claims did not implicate Chapter 766's requirements. In doing so, the trial court determined that the wrongful acts complained of were not "directly related to improper application of medical services" and did not require the use of professional judgment or skill. The trial court therefore reasoned that the claim did not arise out of the rendering of or failure to render medical care because the decision not to transfer the decedent constituted a non-medical decision. In light of this determination, the trial court found that neither the pre-suit requirements of Chapter 766 nor the statute of limitations applicable to medical malpractice claims served to bar Respondents' Complaint.

ANALYSIS

To obtain a writ of certiorari, a petitioner must demonstrate "(1) a departure from the essential requirements of the law, (2) a resulting material injury for the remainder of the [case], and (3) the lack of an adequate remedy on appeal." *Allan & Conrad, Inc. v. Univ. of Cent. Fla.*, 961 So. 2d 1083, 1087 (Fla. 5th DCA 2007) (citing *Martin-Johnson, Inc. v. Savage,* 509 So. 2d 1097, 1099 (Fla. 1987)). The Florida Supreme Court has recognized the second and third prongs, termed "irreparable harm," are satisfied where

an order denying a motion to dismiss implicates the pre-suit requirements of a medical malpractice statute. *Williams v. Oken*, 62 So. 3d 1129, 1133 (Fla. 2011); *see also Palms W. Hosp. Ltd. P'ship v. Burns*, 83 So. 3d 785, 788 (Fla. 4th DCA 2011) ("Irreparable harm can be shown where a court incorrectly denies a motion to dismiss for failure to follow pre-suit requirements, as doing so would eliminate the cost-saving features the Act was intended to create.") (citation omitted). In this case, Petitioners' claim that Respondents' actions against it constitute a medical malpractice action sufficiently invokes the certiorari jurisdiction of this Court. *Cf. Omni Healthcare, Inc. v. Moser*, 106 So. 3d 474, 475 (Fla. 5th DCA 2012) (finding irreparable harm, proceeding with certiorari review, and ultimately granting relief and quashing trial court's order denying health care provider's motion to dismiss based on plaintiff's failure to comply with pre-suit requirements, even though plaintiff maintained he had asserted simple negligence claim and not medical malpractice claim). Thus, we now consider whether the trial court's orders denying Petitioners' motions to dismiss departed from the essential requirements of law.

The Legislature has defined a claim for "medical negligence" or "medical malpractice" as "a claim, arising out of the rendering of, or the failure to render, medical care or services." § 766.106(1)(a), Fla. Stat. (2014); § 95.11(4)(b), Fla. Stat. (2014). The Florida Supreme Court interpreted this statutory language to mean that for an action to sound in medical malpractice, the act from which the claim arises must be directly related to medical care or services, which require the use of professional judgment or skill. *See Nat'l Deaf Acad., LLC v. Townes,* 242 So. 3d 303, 311-12 (Fla. 2018). Whether a specific claim falls within this statutory definition of malpractice turns on the complaint's allegations, rather than the particular cause of action alleged. *See Mark E. Pomper, M.D.,*

P.A. v. Ferraro, 206 So. 3d 728, 732 (Fla. 4th DCA 2016) ("The complaint's allegations govern the analysis.") (citation omitted); *Dr. Navarro's Vein Ctr. of Palm Beach, Inc. v. Miller,* 22 So. 3d 776, 778 (Fla. 4th DCA 2009) ("The trial court [should] parse the factual allegations from the legal conclusions alleged by the plaintiff."). Thus, the appropriate inquiry involves determining whether a plaintiff will be required to establish that the allegedly negligent act "represented a breach of the prevailing professional standard of care," as testified to by a qualified medical expert, in order to prove his claim. *Townes*, 242 So. 3d at 311-12. In conducting such an inquiry, courts must accept as true all well-pled allegations. But there is no obligation "to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party." *McCall v. Scott*, 199 So. 3d 359, 366 (Fla. 1st DCA 2016) (quoting *Shands Teaching Hosp. & Clinics, Inc. v. Estate of Lawson ex rel. Lawson,* 175 So. 3d 327, 331 (Fla. 1st DCA 2015), *disapproved of on other grounds by Townes*, 242 So. 3d 303).

By focusing on the act from which the claim arises, courts have held on several occasions that a claim, ostensibly for an intentional tort, fraud, or RICO violation, actually presented a medical malpractice claim. *See, e.g.*, *Burns*, 83 So. 3d 785; *Paulk v. Nat'l Med. Enters., Inc.,* 679 So. 2d 1289 (Fla. 4th DCA 1996) (holding claim that alleged hospital extended patient stays without medical necessity in order to exhaust available insurance coverage was in fact medical malpractice claim that triggered pre-suit investigation statute even though claim was framed as fraud claim); *Tunner v. Foss*, 655 So. 2d 1151 (Fla. 5th DCA 1995) (holding action alleging intentional tort and contract claims was medical malpractice action where it was alleged that physician refused to refer patient to specialist or admit him to hospital due to alleged economic self-interest arising

out of physician's relationship with corporate health care provider). For example, in *Burns,* the Fourth District considered whether a suit alleging that doctors refused to provide treatment to a patient due to a lack of insurance, rather than because of the doctors' exercise of professional judgment, presented a claim for medical negligence. The plaintiff's complaint claimed the defendant hospital was negligent for retaining physicians who it knew would not treat patients without insurance. *Burns*, 83 So. 3d at 787. The Fourth District held that "the failure of the on-call doctors to respond," which allegedly resulted in the patient's death, "sound[ed] in medical negligence, even if the doctors' motives were purely economic." *Id.* at 788. In so holding, the Fourth District observed: the "retention of these doctors, who the hospital knew were making financial decisions to refuse to treat patients lacking insurance, is a medical negligence claim where the respondent is claiming that [the patient's] death resulted from the lack of treatment." *Id.*

Here, the act from which Respondents' claim arises also concerns a lack of treatment: Dr. Hill's decision to admit the decedent to receive critical care management, as opposed to transferring her to another facility's ICU. In order to establish damages, Respondents will need to show the decision was improper. In other words, Respondents will be required to show that Dr. Hill improperly exercised medical judgment, in contradiction of the prevailing professional standard of care, through the testimony of a qualified medical expert. *Accord Haslett v. Broward Health Imperial Point Med. Ctr.*, 197 So. 3d 124 (Fla. 4th DCA 2016) (noting determination to discharge is exercise of medical judgment). Like the plaintiffs in *Burns*, *Paulk*, and *Turner*, Respondents allege that *the reason* for the improper decision was economic interest. Even so, the damages Respondents seek are inescapably linked to the alleged failure to provide appropriate

medical care. Consequently, the claim is one "arising out of the rendering of, or failure to render, medical care or services." § 766.106(1)(a), Fla. Stat. (2014); *see also Indian River Mem'l Hosp. v. Browne*, 44 So. 3d 237, 238-39 (Fla. 4th DCA 2010) (holding that plaintiff was required to comply with Chapter 766 because manner by which patient's ER care was managed makes plaintiff's claim one of medical negligence despite plaintiff's contrary assertions). The trial court's contrary determination constituted a departure from the essential requirements of law. *See Allstate Ins. Co. v. Kaklamanos,* 843 So. 2d 885, 890 (Fla. 2003) ("Clearly established law can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law.").

CONCLUSION

Because Respondents' claims sound in medical negligence, we grant the petitions, quash the orders on review, and remand for additional proceedings consistent with this opinion. Accordingly, we do not reach the remainder of Petitioners' arguments.

PETITIONS GRANTED; ORDERS QUASHED; CAUSE REMANDED.

LAMBERT and TRAVER, JJ., concur.