



**In the Missouri Court of Appeals  
Eastern District  
DIVISION TWO**

SHARON NEWTON and	)	No. ED106593
BRIAN NEWTON,	)	
	)	
Appellants,	)	Appeal from the Circuit Court
	)	of St. Louis County
vs.	)	16SL-CC02003
	)	
MERCY CLINIC EAST COMMUNITIES	)	Honorable Stanley J. Wallach
D/B/A MERCY CLINIC OB/GYN, and	)	
CHRISTINA KAY MEDDOWS-JACKSON,	)	
MD,	)	
	)	
Respondents.	)	FILED: December 18, 2018

**OPINION**

Sharon Newton and Brian Newton (collectively “the Newtons”) appeal from the trial court’s grant of summary judgment in favor of Mercy Clinic East Communities d/b/a Mercy Clinic OB/GYN (“Mercy Clinic”) and Dr. Christina Kay Meddows-Jackson (“Dr. Meddows-Jackson”) (collectively “Respondents”) on the Newtons’ action for medical negligence on statute of limitations grounds. We reverse and remand.

**Factual and Procedural Background**

On June 1, 2016, the Newtons brought this medical negligence action against Mercy Clinic and Dr. Meddows-Jackson, alleging Dr. Meddows-Jackson, acting as an agent of Mercy Clinic, provided negligent post-operative medical care to Sharon Newton (“Ms. Newton”)

following a right ovarian cystectomy performed on July 10, 2012. Specifically, the Newtons allege Respondents' "were negligent between approximately 7/16/12 and 8/1/12 in failing to perform timely blood testing and a wound culture and in failing to prescribe appropriate antibiotics." The Newtons claim that as a result of this alleged negligence, the post-operative infection caused abscesses and resulted in Ms. Newton's infertility and related complications, which were treated by Dr. Meddows-Jackson and Mercy Clinic doctors until 2015. The Newtons allege that throughout this period, Ms. Newton was under the continued care of Dr. Meddows-Jackson and was "being treated for the complications of defendants' negligence."

On October 19, 2016, Respondents filed their answer raising the statute of limitations as an affirmative defense.

On July 5, 2017, Respondents filed their motion for summary judgment arguing that the Newtons failed to establish that their case fell within the scope of the "continuing care" exception, as articulated by Missouri law, that the action was barred by the statute of limitations and that, therefore, they were entitled to judgment as a matter of law.

On January 5, 2018, the trial court entered Judgment in favor of Respondents. In its Judgment, the trial court found the undisputed facts demonstrated Ms. Newton was last seen by Dr. Meddows-Jackson on February 5, 2013 in relation to the issue that gave rise to their physician-patient relationship, the need for emergent treatment of an ovarian dermoid cyst, and thus, the Newtons' claims were barred by the statute of limitations.

The trial court found the undisputed facts reflected two separate courses of treatment. The trial court found that the first course of treatment occurred between July 5, 2012 and February 5, 2013, and involved Dr. Meddows-Jackson's surgical treatment of an ovarian

dermoid cyst. The trial court found that this course of this treatment included the removal of the ovarian cyst and the care resulting from the post-operative infection.

The trial court found that the second course of treatment, which created “a new physician-patient relationship,” began on January 29, 2015. This visit was for a regular “well woman” exam, during which Ms. Newton also discussed her difficulty in conceiving, and as a result Dr. Meddows-Jackson ordered testing on Ms. Newton’s fallopian tubes. At a follow-up visit on May 11, 2015, Dr. Meddows-Jackson noted that both of Ms. Newton’s “fallopian tubes [were] abnormal from her pelvic abscesses.” At this visit, Dr. Meddows-Jackson recommended Essure<sup>1</sup> occlusion for the damage to the fallopian tubes, noting that Ms. Newton’s right fallopian tube was “abnormal and . . . adhered to [the] bowel.” Dr. Meddows-Jackson then noted that Ms. Newton was “at high risk of getting an ectopic and ectopic pregnancy can be very dangerous for her as salpingectomy<sup>2</sup> is not an option. A discussion regarding the procedure was held with the patient in the office.”<sup>3</sup>

After review of the summary judgment motion and accompanying legal support and argument, the trial court concluded there was “nothing in the record to support [the Newtons’] contention that the 2015 visits were part of a continuum of care from the cyst removal in 2012,” and found that the claims of medical negligence with respect to the post-operative infection were barred by the statute of limitations.

On February 5, 2018, the Newtons filed their “Motion for New Trial and to Amend Judgment,” arguing that there were genuine issues of material fact as to the application of the continuing care doctrine and specifically to the conclusion that the last visit for treatment related

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<sup>1</sup> Essure is a permanent birth control procedure intended to prevent pregnancy whereby a soft, flexible insert is placed into each of the fallopian tubes.

<sup>2</sup> Salpingectomy is the surgical removal of one or both fallopian tubes.

<sup>3</sup> Treatment of Ms. Newton’s fertility issues were referred to a different specialist as this care was beyond the scope of Dr. Meddows-Jackson’s practice.

to the infection was in 2013. The trial court denied the motion on April 3, 2018. This appeal follows.<sup>4</sup>

#### Standard of Review

Summary judgment allows a trial court to enter judgment for the moving party where the party demonstrates a right to judgment as a matter of law based on facts about which there is no genuine dispute. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993). Our review is essentially de novo. Id. When considering an appeal from summary judgment, we review the record in the light most favorable to the party against whom the court entered judgment. Id.

“A ‘defending’ party may establish a right to summary judgment by demonstrating: (1) facts negating any one of the elements of the non-movant's claim; (2) ‘that the non-movant, after an adequate period for discovery, has not been able and will not be able to produce sufficient evidence to allow the trier of fact to find the existence of any one’ of the elements of the non-movant’s claim; or (3) ‘that there is no genuine dispute as to the existence of facts necessary to support movant’s properly pleaded affirmative defense.’” Goerlitz v. City of Maryville, 333 S.W.3d 450, 453 (Mo. banc 2011) (quoting ITT Commercial Fin. Corp., 854 S.W.2d at 381).

Once the defendant establishes a *prima facie* showing that it is entitled to judgment as a matter of law, the burden shifts to the plaintiff to set forth specific facts, by discovery, affidavit, deposition, or otherwise, showing the existence of a material fact. ITT Commercial Fin. Corp., 854 S.W.2d at 381. The plaintiff may not rely on allegations and denials in the pleadings. Id. In the context of summary judgment, a material fact is one from which the right to judgment flows. Goerlitz, 333 S.W.3d at 453. A genuine dispute exists when “the issue, or dispute, [is] a

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<sup>4</sup> Additional facts relevant to the Newtons’ point on appeal will be set forth, as needed, in the discussion section below.

real and substantial one—one consisting not merely of conjecture, theory[,] and possibilities.”  
ITT Commercial Fin. Corp., 854 S.W.2d at 378.

Whether the statute of limitations applies to an action is a question of law that we review *de novo*. Norman v. Lehman, 347 S.W.3d 611, 614 (Mo. App. E.D. 2011). However, when different conclusions may be drawn from the evidence as to whether the statute of limitations has run, it is a question of fact for the jury to decide. Id.

### Discussion

In their sole point on appeal, the Newtons argue that the trial court erred in granting summary judgment in favor of Respondents because there were genuine issues of material fact as to the application of the continuing care doctrine. Specifically, the Newtons contend that the evidence raised a factual issue over whether there was continuing care and treatment between 2012 and 2015, which would toll the statute of limitations. We agree.

Pursuant to Section 516.105, RSMo 2000,<sup>5</sup> medical negligence actions must generally be brought within two years of the allegedly negligent act. With respect to Section 516.105, Missouri law recognizes only four circumstances when the two year statute of limitations may be tolled. Davidson v. Lazcano, 204 S.W.3d 213, 216 (Mo. App. E.D. 2006). Three exceptions are codified in Section 615.105. The three exceptions are: (1) when a foreign object is left in the body, (2) when there is a negligent failure to inform of test results, or (3) when the person bringing the action is a minor less than eighteen years of age. Section 615.105. There is also a fourth common law exception commonly referred to as the “continuing care exception,” on which the Newtons rely in the instant case. Davidson, 204 S.W.3d at 216.

The “continuing care” exception applies where the treatment continues and is of such a nature as to charge the medical defendant with the duty of continuing care and treatment that is

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<sup>5</sup> Unless otherwise indicated, all further statutory references are to RSMo 2000 as amended.

essential to recovery. Weiss v. Rojanasathit, 975 S.W.2d 113, 119-20 (Mo. banc 1998).

Missouri courts have long recognized that the statute of limitations does not begin to run against a plaintiff-patient until treatment by the medical defendant ceases:

The duty to attend the patient continues so long as required unless the physician-patient relationship is ended by (1) the mutual consent of the parties, (2) the physician's withdrawal after reasonable notice, (3) the dismissal of the physician by the patient, or (4) the cessation of the necessity that gave rise to the relationship. Absent good cause to the contrary, *where the doctor knows or should know that a condition exists that requires further medical attention to prevent injurious consequences, the doctor must render such attention or must see to it that some other competent person does so until the termination of the physician-patient relationship.* [Emphasis added.]

Weiss, 975 S.W.3d at 119-20. Here, as reflected by the summary judgment record, the undisputed facts demonstrate the following timeline of events:

July 3, 2012: Ms. Newton presented to the emergency room with pain, was diagnosed with an ovarian dermoid cyst, and was advised that she needed to see an obstetrician to have it removed.

July 5, 2012: Ms. Newton presented to Dr. Meddows-Jackson for the first time for treatment of this dermoid cyst.

July 10, 2012: Ms. Newton underwent surgery for the dermoid cyst performed by Dr. Meddows-Jackson.

July 16, 2012-August 1, 2012: Ms. Newton saw Dr. Meddows-Jackson for three post-operative care visits on July 16, 2012, July 24, 2012, and August 1, 2012, which included complications arising from and treatment of a post-operative infection.

August 15, 2012: Dr. Meddows-Jackson admitted Ms. Newton to Mercy Hospital. At this point, Dr. David Janssen ("Dr. Janssen"), an infectious disease specialist, assumed the role of managing and treating Ms. Newton's post-operative infection, including an infection inside Ms. Newton's abdomen.

September 11, 2012: Dr. Meddows-Jackson saw Ms. Newton in the office for follow up of the post-operative infection, completed her care of Ms. Newton in relation to the dermoid cyst, and released her to return to work.

October 2012: Ms. Newton saw Dr. Janssen for treatment of her post-operative infection in the office.

February 5, 2013: Visit with Dr. Meddows-Jackson pertaining to the cyst removal and post-operative infection, wherein Dr. Meddows-Jackson did not recommend any follow up care at that time.

May 23, 2013 and June 18, 2013: Ms. Newton presented to Mercy Clinic and was seen by Dr. Marsha McBride (“Dr. McBride”). During the June 18, 2013, visit Dr. McBride noted in her chart that Ms. Newton was there for a follow-up on her wound infection and that the wound was “well healed and no longer open.”

January 29, 2015: Ms. Newton presented to Dr. Meddows-Jackson for a well woman general gynecological exam, where Ms. Newton expressed her difficulty with conceiving and resulting in Dr. Meddows-Jackson ordering tests on Ms. Newton’s fallopian tubes.

April 28, 2015: Ms. Newton presented to Mercy Clinic and was seen by Dr. Corey Wagner (“Dr. Wagner”), who stated in his chart that Ms. Newton’s fallopian tube damage was from the “previous florid abdominal infection.” Dr. Wagner advised that Ms. Newton undergo the Essure procedure in the right fallopian tube to minimize risk of ectopic pregnancy.

May 11, 2015: Ms. Newton presented to Dr. Meddows-Jackson for follow up regarding infertility treatments and fallopian tube damage, related to the 2012 infection and treatment. Essure procedure recommended to prevent life-threatening ectopic pregnancy as indicated by Dr. Wagner.

June 9, 2015: Ms. Newton presented to Dr. Meddows-Jackson for follow up post-operative visit approximately 2 weeks after the Essure procedure was performed by a doctor at Mercy Clinic to treat the fallopian tube damage.

Based on this record, the trial court found there was no continuing treatment in 2015 because there was a “cessation of the necessity giving rise to the relationship” on February 5, 2013, and that the visit of January 25, 2015, was for a general gynecological exam, creating a new physician-patient relationship, rather than ongoing care for the 2012 infection. In support, the trial court cites the medical records showing the visit was “for annual routine Pap and checkup,” and that the patient was “not currently having problems.” The trial court also concluded that Ms. Newton reported no problems related to the earlier infection at the January 2015 visit; therefore, this visit constituted “a new physician-patient relationship.”

While the timeline of events is undisputed, the Newtons deny that the February 5, 2013, visit was the *last* time, Respondents saw Ms. Newton in relation to her post-operative wound infection resulting from the right ovarian cystectomy Dr. Meddows-Jackson performed on July 10, 2012. In support of this contention, the Newtons point to the fact Dr. Meddows-Jackson made a note in her chart from the May 11, 2015, visit stating that Ms. Newton’s “fallopian tubes are abnormal from her pelvic abscess,” and recommended treatment for Ms. Newton’s damaged fallopian tubes in 2015. The Newtons then cite to additional medical records and deposition testimony from Dr. Meddows-Jackson and their own expert alleging Ms. Newton’s fallopian tube damage was due to the post-operative wound infection and resulting pelvic abscess.

In response, Respondents argue that the 2015 visits were “unconnected” to the visits in 2012 and 2013, but even assuming the 2015 medical diagnosis of blocked fallopian tubes developed as a result of the 2012 infection, this is insufficient to invoke the continuing care exception to toll the statute of limitations and is irrelevant to how the law applies to the facts at hand for purposes of summary judgment. We are not persuaded by Respondents’ arguments.

The Missouri Supreme Court first adopted the continuing care exception in Thatcher v. DeTar, 351 Mo. 603 (Mo. 1943). In Thatcher, the plaintiff filed a medical negligence action against the defendant-surgeon after realizing the defendant surgeon negligently left a needle in his body following an appendectomy procedure. Thatcher, 351 Mo. at 605-06. The Court held that the statute of limitations applicable to medical negligence actions “does not commence running until treatment by the physician or surgeon has terminated, where the treatment is continuing and of such nature as to charge the medical man with the duty of continuing care and treatment which is essential to recovery until the relation ceases.” Id. at 608. In finding that there was “one cause of action against the [doctor]” to toll the statute of limitations, the Court



reasoned that the defendant surgeon was employed by the plaintiff for *both* the operation and treatment of plaintiff thereafter, and that therefore the “negligent act complained of was not only the leaving of the needle in plaintiff’s body but the subsequent negligent treatment in failing to discover it.” Id. at 607. As such, the Court concluded that “... the statute of limitations does not begin to run until the treatment of plaintiff’s ailment by the defendant ceases.” Id. at 609. The “ailment” has been repeatedly defined as including the injury. See Brickey v. Concerned Care of Midwest, Inc., 988 S.W.2d 592, 597-598 (Mo. App. E.D. 1999) (the continuing care exception provides that the statute begins to run when the defendant ceases to treat the injury caused by the alleged act of negligence or neglect); Dunagan By & Through Dunagan v. Shalom Geriatric Ctr., 967 S.W.2d 285, 289 (Mo. App. W.D. 1998); Hill v. Klontz, 909 S.W.2d 725, 726 (Mo. App. W.D. 1995)).

More recently, the Missouri Supreme Court has addressed the continuing care exception under the current version of the statute of limitations applicable to medical negligence actions. In Weiss, and Montgomery v. South County Radiologists, Inc., 49 S.W.3d 191 (Mo. banc 2001), the Court reiterated the standard set forth in Thatcher by finding the continuing care exception applies “where the treatment is continuing and of such nature as to charge the medical man with the duty of continuing care and treatment which is essential to recovery until the relation ceases.” Weiss, 975 S.W.2d at 119- 20; Montgomery, 49 S.W.3d at 194. The Missouri Supreme Court also clarified what constitutes a duty of continuing care: “[t]he duty to attend the patient continues so long as required unless the physician-patient relationship is ended by (1) the mutual consent of the parties, (2) the physician’s withdrawal after reasonable notice, (3) the dismissal of the physician by the patient, or (4) the cessation of the necessity that gave rise to the relationship.” Weiss, 975 S.W.2d at 119-20; Montgomery, 49 S.W.3d at 194. Moreover, “[a]

prerequisite for the continuing care exception is that a patient is under the doctor's continuing care." Montgomery, 49 S.W.3d at 194.

In arguing that the continuing care exception applies in the instant case, the Newtons allege that Dr. Meddows-Jackson owed a duty of continuing care to Ms. Newton following the February 5, 2013 visit. However, Respondents repeatedly argue that the parties' belief that the problems from the infection were over in 2013 bars the application of the continuing care doctrine to the 2015 visits. Here, as in Weiss, rather than focus on what the patient and doctor thought before the problems became apparent, the focus should be on what the physician knew or should have known at the time the patient returns for care.

Absent good cause to the contrary, where the doctor knows or should know that a condition exists that requires further medical attention to prevent injurious consequences, the doctor must render such attention or must see to it that some other competent person does so until termination of the physician-patient relationship...."

Weiss, 975 S.W.2d at 120.

The factual record submitted by the Newtons in opposition to summary judgment included deposition testimony by Dr. Meddows-Jackson that the kind of fallopian tube damage found in Ms. Newton in 2015 is most commonly caused by intra-abdominal infections and could have been from the intra-abdominal infection that Dr. Meddows-Jackson treated in 2012. This evidence could support an inference that when Ms. Newton returned to Dr. Meddows-Jackson's care complaining of an inability to conceive in 2015, Dr. Meddows-Jackson knew or should have known that the previous infection could have caused this condition which would require continued care because of other possible complications. Moreover, while Respondents insist that the January 2015 visit was "only" for a well women exam, Ms. Newton's deposition testimony demonstrates that her infertility and related complications were discussed and tests ordered at

this visit and treatment subsequently discussed at the May 11, 2015 visit. This testimony was corroborated by the medical records for the visit of January 25, 2015, which noted Ms. Newton's inability to conceive and other possible complications, and contained orders for fertility testing, as well as Dr. Wagner's medical records from April 2015. In addition, the Newtons' expert, Dr. McMeeking, testified that the damage resulting from the 2012 infection caused and was treated by Dr. Meddows-Jackson at the May 2015 visit. Dr. Meddows-Jackson also agreed in her deposition that the damage to Ms. Newton's fallopian tubes were most commonly caused by intra-abdominal infections, and that the damage found in 2015 "could" be a result from the infection that Dr. Meddows-Jackson treated in 2012.

Under Thatcher and its progeny, therefore, the focus of our analysis should not be on when the original condition ceased, but rather on when the patient last treated with the physician for the consequences of the injury. Thatcher, 351 Mo. at 608 (holding that the statute of limitations against a healthcare provider is tolled until the last time the patient treated with the provider, as long as the treatment is "continuing and of such a nature as to charge the medical man with the duty of continuing care and treatment which is essential to recovery"). In other words, when considering application of the continuing care doctrine, the treatment should be considered as a whole until it ceases. Until that point, a physician has a continuing obligation to treat a patient who returns with complications potentially resulting from the doctor's care, or see to it that some other competent person does so, where the doctor knows or should know that a condition exists that requires further medical attention to prevent injurious consequences. Weiss, 975 S.W.2d at 120.

In the instant case, the trial court erroneously focused on the date of Dr. Meddows-Jackson's treatment of Ms. Newton's infection on February 5, 2013, as ending the tolling of

continuing care. Contrary to the trial court's finding, the discussion and testing for infertility at the January 29, 2015 visit, and the treatment Ms. Newton received on May 11, 2015 and by other Mercy Clinic doctors, raised a factual dispute over whether these visits were "for" Respondents' negligence in treating the infection in 2012 and thereafter.

Finally, despite Respondents' insistence, the Newtons are not invoking a discovery rule to start the running of the limitation period when a plaintiff learns of the injury. See Doe v. O'Connell, 146 S.W.3d 1, 3 (Mo. App. E.D. 2004) ("Missouri has rejected a 'discovery' rule to determine when a cause of action accrues.") We find that rather than the Newtons' claim being based on discovery of the injury, it may be based on Ms. Newton's continued treatment in 2015, within two years of the original treatment, with infertility issues and other complications commonly related to infection, and the subsequent treatment received in that regard. Weiss, 975 S.W.2d at 119-20.

Contrary to the trial court's findings, material facts are in dispute as to whether Ms. Newton's relationship with Dr. Meddows-Jackson ended on February 5, 2013, thus starting the running of the statute of limitations. Viewed in the light most favorable to the Newtons, and affording the Newtons all reasonable inferences, there was evidence in the record that the infertility and other complications treated in 2015 were possibly caused by the 2012 infection. This was discussed on January 29, 2015 and subsequent visits, and certainly raises a factual issue regarding whether there was continuing care of Ms. Newton between 2012 and 2015.

Because the trial court's legal conclusion that Respondents' duty of continuing care ended on February 5, 2013 rests on disputed material facts, summary judgment on that basis was improper. Moreover, because different conclusions may be drawn from the evidence as to

whether the statute of limitations has run, it is a question of fact for the jury to decide. Norman, 347 S.W.3d at 614. Point granted.

Conclusion

We reverse and remand to the trial court for further proceedings consistent with this opinion.

  
Honorable Mary K. Hoff

Philip M. Hess, Presiding Judge and Robert G. Dowd, Jr., Judge: concur