UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00677

September Term, 2016

BRIAN CHIGBUE

v.

WILLIAM BRENNAN, *et al.*

Arthur,
Shaw Geter,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Arthur, J.

Filed: May 17, 2017

Dr. Brian Chigbue brought a legal malpractice action against his former attorney, William C. Brennan Jr., and Mr. Brennan's law firm. Mr. Brennan and the firm moved for summary judgment on Dr. Chigbue's claims, asserting, among other things, that they were barred by the three-year statute of limitations in Maryland Code (1974, 2013 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article.

After a hearing, the Circuit Court for Baltimore City granted summary judgment in favor of Mr. Brennan and his firm on limitations grounds.

Dr. Chigbue appealed. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. The Criminal Charges, the Board of Physicians' Investigation, and the Engagement of Mr. Brennan

Dr. Chigbue was a physician in Capitol Heights. In December 2007, he was charged with sexually assaulting two of his female patients. As news of his arrest became public, more patients came forward. Dr. Chigbue retained Mr. Brennan to represent him.

In September 2008 Mr. Brennan secured not-guilty verdicts in two of the criminal cases. Meanwhile, however, the Maryland Board of Physicians had initiated an investigation into the patients' allegations. The Board suspended Dr. Chigbue's medical license in January 2008 and commenced a disciplinary proceeding against him. Medical boards for the District of Columbia, the State of Virginia, and the State of Tennessee had followed suit.

B. The Consent Order

On November 5, 2008, the Board offered Dr. Chigbue "a global settlement of all administrative charges[,] which included having the remaining criminal charges placed on the stet docket." In exchange, Dr. Chigbue would consent to the permanent revocation of his medical license. Mr. Brennan recommended that Dr. Chigbue accept the offer, because it would eliminate the possibility of a conviction in the remaining criminal cases, and because it would end the four, separate medical-licensing proceedings, in which the regulatory boards had to prove their allegations only by a preponderance of the evidence and not beyond a reasonable doubt. After discussing the Board's offer with Mr. Brennan, Dr. Chigbue sent him an email, stating: "I have decided not to contest my pending case with the Maryland Medical Board."

On November 19, 2008, Dr. Chigbue was presented with a "Consent Order of Revocation." The consent order contains 39 paragraphs of detailed findings concerning Dr. Chigbue's sexual misconduct with four separate patients. The order also contains the Board's conclusions of law that Dr. Chigbue was guilty of immoral and unprofessional conduct in the practice of medicine, in violation of the Health Occupations Article and the Board's sexual misconduct regulations.

Following the findings of fact and conclusions of law was the Board's order itself, which reads as follows:

> **ORDER**
>
> Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 20th day of November, 2008, by a quorum of the Board considering this case:

> **ORDERED** that the Respondent's license to practice medicine in the State of Maryland be and is hereby **PERMANENTLY REVOKED;** and be it further
>
> **ORDERED** that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§ 10-611 et seq. (2004 Repl. Vol.).

(Emphasis in original.)

Following these provisions was a statement of consent, which, in pertinent part, stated:

> I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

Dr. Chigbue signed the order.

Later that day, Dr. Chigbue, Mr. Brennan, and an Assistant State's Attorney appeared before the Circuit Court for Prince George's County, where the criminal cases against him were pending. In accordance with Dr. Chigbue's agreement with the Board, the State orally moved "to place [the remaining criminal cases] on the STET docket" because, the State said, Dr. Chigbue signed a document "in which [he] agreed" to the permanent revocation of "his license to practice medicine in the State of Maryland, District of Columbia, in the State of Virginia[,] and the State of Tennessee." The court granted the State's unopposed motion.

C. The Engagement of Mr. Ucheomumu

In 2009 and 2010, two patients filed civil actions against Dr. Chigbue, citing the signed consent order as the basis for their claims. On or about September 15, 2010, Dr.

Chigbue retained another attorney, Andrew Ucheomumu, to represent him in the civil lawsuits.

According to assertions in Dr. Chigbue's subsequent pleadings and affidavits in the litigation against Mr. Brennan and his firm, Mr. Ucheomumu told Dr. Chigbue that in the consent order he had admitted to engaging in the misconduct that he had been accused of committing.[1] Although the consent order expressly affirmed that Dr. Chigbue "fully" understood "its language, meaning and terms" and understood its "meaning and effect," he claimed that he became aware of its true import only when Mr. Ucheomumu explained it to him.

After a successful defense of the civil lawsuits, Dr. Chigbue filed a petition for the reinstatement of his medical license in the State of Maryland. The Board denied Dr. Chigbue's petition. In a letter, dated August 10, 2012, the Board wrote that, in stating that Dr. Chigbue's medical license had been "PERMANENTLY REVOKED," the consent order was "clear on its face and indisputable." The Board added that Dr. Chigbue "acknowledged" in the order "that he voluntarily made the decision" to consent to the revocation of his license and that he "fully comprehended [the order's] meaning and terms."

D. Legal Malpractice Action

On September 12, 2013, almost five years after he signed the consent order, Dr.

[1] Dr. Chigbue agreed to be bound by the consent order, waived any right to contest its findings and conclusions (at least vis-à-vis the Board), and acknowledged the validity of the order as if it had been entered after a full evidentiary hearing. It is not at all clear, however, that he admitted the truth of the Board's findings for all purposes.

Chigbue filed a legal malpractice action against Mr. Brennan and his firm in the Circuit Court for Prince George's County. In brief, Dr. Chigbue alleged that Mr. Brennan had breached his professional obligations by counseling him to enter into an order in which he consented to the permanent revocation of his medical license.

Obviously anticipating a limitations defense, Dr. Chigbue's first amended complaint alleged that he "discovered the true facts of the Consent Order . . . on September 15, 2010," two years and 362 days before he filed suit. In a second amended complaint, Dr. Chigbue alleged that "[o]n or about September 15, 2010," he hired Mr. Ucheomumu, who informed him "for the first time that [he] admitted in the Consent Order the misconducts [sic] [he] was accused of." The complaint went on to allege that, "[f]or the first time, Dr. Chigbue became aware of the content of the 'Consent Order.'" The complaint also alleged that Dr. Chigbue "first knew of the content of the Consent Order" on "September 15, 2010."

Mr. Brennan and his firm moved to dismiss the complaint, or alternatively, for summary judgment on Dr. Chigbue's claims. They advanced a number of grounds, including insufficiency of service of process, lack of prosecution under Maryland Rule 2-507, and the three-year statute of limitations.

In opposing the motion for summary judgment, Dr. Chigbue submitted an affidavit in which he reiterated that "[o]n or about September 15, 2010," Mr. Ucheomumu told him "for the first time that [he] admitted in the Consent Order the misconducts [sic] [he] was accused of" and that "for the first time," he "became aware of the content of the document called "'Consent Order.'"

E. Proceedings Before the Circuit Court for Prince George's County

On July 14, 2015, the Circuit Court for Prince George's County held a hearing on the dispositive motion. On August 10, 2015, the court issued a written order, dismissing the complaint without prejudice, because of insufficiency of service of process and lack of prosecution, but denying the motion for summary judgment on grounds of limitations.

Evidently recognizing that the court was about to dismiss his complaint, Dr. Chigbue filed the complaint in this case on August 4, 2015, a few days before the court issued its order. The new complaint was substantively identical to the complaint that the court dismissed. Dr. Chigbue's amended complaint repeated his earlier allegation that "[o]n or about September 15, 2010," Mr. Ucheomumu told him "for the first time that [he] admitted in the Consent Order the misconducts [sic] [he] was accused of" and that "[f]or the first time, Dr. Chigbue became aware of the content of the Consent Order." The amended complaint also repeated the allegation that Dr. Chigbue "first knew of the content of the Consent Order" on "September 15, 2010."[2]

On October 23, 2015, Mr. Brennan and his firm moved for summary judgment on a number of grounds, including limitations.

On February 2, 2016, the parties jointly consented to transfer the case from Prince George's County to Baltimore City.

[2] At a motions hearing, Mr. Ucheomumu explained that the instant complaint involved "the same exact parties, the same plaintiffs, the same argument, . . . exactly the same thing" as the earlier complaint.

F. Proceedings Before the Circuit Court for Baltimore City

On June 6, 2016, the Circuit Court for Baltimore City held a hearing on the motion for summary judgment. Both parties asked the court to consider when Dr. Chigbue had sufficient notice of an injury such that the three-year period of limitations would begin to run. *See generally Bank of New York v. Sheff*, 382 Md. 235, 247 (2004); *see also Windesheim v. Larocca*, 443 Md. 312, 335 (2015).

Mr. Brennan argued that Dr. Chigbue had notice of his claims as early as November 19, 2008 (when he signed the consent order), and in any event by September 15, 2010 (when he admitted to having become aware of the consent order's contents). Employing either date, Mr. Brennan said, Dr. Chigbue's claims were time-barred.

Dr. Chigbue responded that on September 15, 2010, "the only thing he knew" was that "he admitted in the consent order the misconduct he was accused of by the four former patients." He maintained that "he didn't know then, . . . that a Board of Physicians would not give him back his medical license after he was found not guilty in a criminal trial, after he was found not liable in any civil proceeding[.]" He contended that his claim accrued on August 10, 2012, when the Board denied his petition for reinstatement of his license. He also contended that the date of accrual was a question of fact for the jury. He attached an affidavit in which he repeated his prior allegations and testimony that "[o]n or about September 15, 2010," Mr. Ucheomumu told him "for the first time that [he] admitted in the Consent Order the misconducts [sic] [he] was accused of," that "for the first time," he "became aware of the content of the document called "Consent Order," and that he "finally learned about the content of the so[-]called

'Consent Order'" on September 15, 2010.

At the conclusion of the hearing, the circuit court ruled in favor of Mr. Brennan and his firm on limitations grounds. In reaching its decision, the court concluded that even if Dr. Chigbue were unaware that he had agreed to the permanent revocation of his license when he signed the consent order on November 19, 2008, there is no dispute of fact that his claim accrued on September 15, 2010, when Mr. Ucheomumu explained the import of the order to him. Because Dr. Chigbue did not file this lawsuit until almost five years later, the court concluded that the three-year statute of limitations barred his claims.

On that same day, the court signed a written order reflecting the disposition of the claims against Mr. Brennan and his firm.

Dr. Chigbue filed this timely appeal.

QUESTIONS PRESENTED

Dr. Chigbue presents three issues on appeal, which we have restated as follows: Did the circuit court correctly conclude that, as a matter of law, Dr. Chigbue's claims accrued on or before September 15, 2010, and hence that the three-year statute of limitations bars his claims?[3]

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[3] Dr. Chigbue phrased his questions as follows:

> 1. Did the Circuit Court for Baltimore City misapply the law and invaded [sic] the province of the trier of fact when it determined the contested date of the accrual in a Motion for summary judgment?
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> 2. Did the Circuit Court for Baltimore City misapply the law by not realizing that the Appellees were *collaterally estopped*

For the following reasons, we shall affirm the circuit court's judgment.

DISCUSSION

In an appeal from the grant of summary judgment, this Court conducts a *de novo* review to determine whether the circuit court's conclusions were legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

Under Section 5-101 of the Courts and Judicial Proceedings Article, "A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Dr. Chigbue does not contend that any other provision of the Code provides a different period of time.

"Maryland has adopted the 'discovery rule,' which 'tolls the accrual of the

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> from relitigating the issue of when the cause of action accrued?
>
> 3. Did the Circuit Court for Baltimore City misapply the law when it granted summary judgment to the Appellees?

limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury.'" *Windesheim v. Larocca*, 443 Md. at 326-27 (quoting *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95-96 (2000)). The discovery rule is "generally applicable in all civil actions." *Id.* at 327 (citing *Poffenberger v. Risser,* 290 Md. 631, 636 (1981)).

"Before an action can accrue under the discovery rule, 'a plaintiff must have notice of the nature and cause of his or her injury.'" *Id.* (quoting *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. at 96). A plaintiff may acquire express notice, which "'is established by direct evidence' and 'embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated.'" *Id*. (quoting *Poffenberger v. Risser*, 290 Md. at 636-37). Alternatively, a plaintiff may acquire "implied" or "inquiry notice," which "is notice implied from 'knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.'" *Id*. (quoting *Poffenberger v. Risser*, 290 Md. at 637).

The determination of when an action accrues "may be based solely on law, solely on fact, or on a combination of law and fact." *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. at 95. When the material facts are not in genuine dispute and a reasonable factfinder could reach only one conclusion as to whether the claim accrued more than three years before the plaintiff filed suit, a court may properly resolve the question of accrual on a motion for summary judgment. *See, e.g.*, *Bank of New York v.*

Sheff, 382 Md. at 247; *see also Windesheim v. Larocca*, 443 Md. at 334; *Russo v. Ascher*, 76 Md. App. 465, 471 (1988); *cf. Lutheran Hosp. v. Levy*, 60 Md. App. 227, 238 (1984) (holding that trial court erred in submitting case to jury because reasonable factfinder could only conclude that plaintiff had inquiry notice more than three years before filing suit); *Sisters of Mercy of Union v. Gaudreau, Inc.*, 47 Md. App. 372, 379 (1980) (affirming denial of petition to compel arbitration and grant of petition to stay arbitration, where plaintiffs "could have ascertained the cause [of a building defect] and the responsibility long before they did so and long before the Statute of Limitations had run its course").

Mr. Brennan and his firm have advanced a compelling argument that Dr. Chigbue had notice of his claims as early as November 19, 2008, when he signed an order consenting to the permanent revocation of his right to practice medicine. Because there is no dispute that Dr. Chigbue signed the consent order, he is "presumed to have read and understood" the document "as a matter of law." *Windesheim v. Larocca*, 443 Md. at 328 (citing *Merit Music Serv., Inc. v. Sonneborn*, 245 Md. 213, 221-22 (1967); *Binder v. Benson*, 225 Md. 456, 461 (1961)). Indeed, separate and apart from any presumption that he "read and understood" the consent order, Dr. Chigbue affirmed, in the order itself, that he "fully" understood "the language, meaning and terms" of the document and understood its "meaning and effect." There is nothing abstruse or obscure in that language: it expressly affirms, in capital letters and bold-faced type, that Dr. Chigbue's license to practice medicine in the State of Maryland had been "**PERMANENTLY REVOKED**."

In these circumstances, it is difficult to conceive how any reasonable finder of fact could reach any conclusion other than that Dr. Chigbue knew on November 19, 2008, that on Mr. Brennan's recommendation he had consented to the permanent revocation of his license. But because the circuit court did not place its decision on the ground that Dr. Chigbue's claims accrued when he signed the consent order on November 19, 2008, we do not affirm the circuit court on that ground. *Lovelace v. Anderson*, 366 Md. 690, 695 (2001) (quoting *PaineWebber Inc. v. East*, 363 Md. 408, 422 (2001)) ("it is an established rule of Maryland procedure that, '[i]n appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the [trial] court relied in granting summary judgment'").

Despite the presumption that he "read and understood" the consent order (*Windesheim v. Larocca*, 443 Md. at 328), and despite the affirmation in the order itself that he "fully" understood its "language, meaning and terms" and understood its "meaning and effect," Dr. Chigbue attempted to confect a genuine dispute of material fact by asserting that he was somehow unaware of the contents of the order until his new attorney, Mr. Ucheomumu, explained them to him "[o]n or about September 15, 2010." That tenuous assertion, if believed, might arguably have been sufficient to defeat summary judgment on the grounds of limitations in Dr. Chigbue's first lawsuit, which he filed three days short of the third anniversary of September 15, 2010. It was, however, palpably insufficient to defeat summary judgment in this lawsuit, which Dr. Chigbue filed on August 4, 2015, more than four years and 10 months after he, by his own admission, learned of the contents of the order. Because Dr. Chigbue did not file this lawsuit until more than three years after he had admittedly received express notice of the basis for his claims against Mr. Brennan and his firm, the circuit court correctly disposed of this case on summary judgment.

In opposing that conclusion, Dr. Chigbue argues that his claims did not accrue until August 12, 2012, when the Board of Physicians denied his petition for reinstatement. Until then, he contends, he had suffered no damages. The doctor's contention is incorrect as a matter of law.

Assuming for the sake of argument that Mr. Brennan erred in some way in advising Dr. Chigbue to enter into the consent order, the doctor sustained some damages on November 20, 2008, when the Board of Physicians approved the order: as of that date, Dr. Chigbue had lost the ability to earn a living by practicing medicine in the State of Maryland.[4]

It makes no difference that Dr. Chigbue's damages may not have fully matured until the Board of Physicians rejected his request for reinstatement in 2012. Maryland has repeatedly rejected the so-called "maturation of harm" doctrine, in which a claim does not accrue until the plaintiff has exhausted all efforts to alleviate the consequences of the defendant's alleged negligence. *See*, *e.g*., *Feldman v. Granger*, 255 Md. 288, 296 (1969) (holding that a malpractice claim against an accountant accrued when the plaintiffs received an IRS deficiency notice, not when the Tax Court later affirmed the

[4] Dr. Chigbue arguably sustained additional damages in 2010, when he was obligated to engage counsel to defend himself in civil litigation in which his former patients attempted to use the consent order against him. *See Feldman v. Granger*, 255 Md. 288, 296 (1969).

IRS's position; the plaintiffs had suffered some harm upon their receipt of the deficiency notice, because it "became necessary for them to incur the expense of retaining legal counsel"); *see also James v. Weisheit*, 279 Md. 41, 44-46 (1977) (in an action against an attorney for falsely representing the amount of a first mortgage that he had recorded ahead of the client's second mortgage, holding that the client sustained a compensable injury when he learned the true amount of the first mortgage, not when a later foreclosure sale on the first mortgage wiped out the client's equity in the property; once the client knew the true amount of the mortgage to which his mortgage was junior, he could determine the extent to which the market value of his mortgage was less than what he had been led to believe); *Leonhart v. Atkinson*, 265 Md. 219, 226 (1972) (same as *Feldman v. Granger*); *Mattingly v. Hopkins*, 254 Md. 88, 96 (1969) (in an action for professional negligence against a surveyor, holding that the claim accrued when the plaintiff discovered the error in the survey, not when the courts later entered judgment against him and in favor of his neighbors as a result of faulty survey; upon discovery of the error, the plaintiff "certainly could have maintained an action to recover expenses incurred due to the erroneous survey").

In another attack on the entry of summary judgment, Dr. Chigbue attempts to evade the consequences of his repeated allegations and sworn assertions that he learned of the contents of the consent order "[o]n or about September 15, 2010." According to Dr. Chigbue, "the only thing for certain that occurred on [that date] was that [he] hired Attorney Andrew Ndubisi Ucheomumu." To the contrary, it is impossible to interpret the many iterations of his identical statements to mean anything other than that Dr. Chigbue first learned of the import of the consent order from Mr. Ucheomumu "[o]n or about September 15, 2010." When the doctor filed his first lawsuit two years and 362 days later, on September 12, 2013, he was undoubtedly motivated by the impending, three-year anniversary of September 15, 2010, the date when he says he acquired notice of his claims.[5]

Finally, Dr. Chigbue contends that because the court denied a motion for summary judgment on grounds of limitations in his first lawsuit, collateral estoppel barred the circuit court from granting a motion for summary judgment in the second lawsuit. He is incorrect for at least two basic reasons.

First, collateral estoppel requires, among other things, a final judgment on the merits. *See, e.g.*, *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 369 (2016). The denial of summary judgment in the first case, however, was not a final judgment on the merits, but an interlocutory ruling in a lawsuit that the court dismissed without prejudice because of procedural defaults by Dr. Chigbue or his counsel. *See, e.g.*, *Mohiuddin v. Doctors Billing & Mgmt. Solutions, Inc.*, 196 Md. App. 439, 452 (2010). Furthermore, even if the court had not dismissed the first lawsuit, but had allowed it to

[5] Dr. Chigbue's arguments might be read to imply that "[o]n or about September 15, 2010," does not mean precisely "on September 15, 2010," and that his vague formulation has given him some temporal leeway. But whatever leeway he may have acquired through the locution "on or about," it is not enough to avoid limitations in this case. "On or about September 15, 2010," means "on September 15, 2010," or "on some other date shortly before or after September 15, 2010." *See Black's Law Dictionary* 1262 (10th ed. 2014) (defining "on or about" to mean "at or around the time specified"). "On or about September 15, 2010," does not mean "almost two years after September 15, 2010," which is what it would have to mean for Dr. Chigbue to have asserted his claim within three years of when he commenced this proceeding on August 4, 2015.

proceed, the denial of summary judgment was just an interlocutory ruling that the court could have reconsidered at any time. Md. Rule 2-602(a) (in general, "an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action . . . is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties"). Because the court in the first lawsuit would have been free to reconsider its denial of summary judgment, the court in this second lawsuit could not possibly have been constrained from granting summary judgment.

Second, collateral estoppel applies only when a court has decided the same factual or legal issue in an earlier case. *See, e.g.*, *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. at 369. Here, however, the first and second lawsuits did not present the same factual and legal issues: in the first lawsuit, the court was called upon to decide whether the three-year statute of limitations barred a claim that Dr. Chigbue first asserted on September 12, 2013; in this lawsuit, by contrast, the court was called upon to decide whether the three-year statute of limitations barred a claim that Dr. Chigbue first asserted on August 4, 2015.

In summary, the circuit court correctly concluded that, as a matter of law, Dr. Chigbue's claims accrued more than three years before he commenced this litigation. Therefore, the circuit court correctly directed the entry of summary judgment in favor of Mr. Brennan and his firm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.