Circuit Court for Prince George's County
Case No. CAL18-32500

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0785

September Term, 2021

JAMES ANGELO RUGGIERI

v.

PAUL K. PIONTKOWSKI, DDS

Fader, C.J.,
Friedman,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 9, 2022

James Angelo Ruggieri, the appellant, sued Paul K. Piontkowski, DDS, the appellee, for dental malpractice. The Circuit Court for Prince George's County awarded summary judgment to Dr. Piontkowski on the ground that the statute of limitations had expired. Mr. Ruggieri contends that the circuit court erred in doing so. However, the undisputed material facts in the record, including Mr. Ruggieri's own deposition testimony, establish that Mr. Ruggieri was on inquiry notice of Dr. Piontkowski's alleged negligence more than three years before Mr. Ruggieri filed his claim. Accordingly, we will affirm.

"An action for damages for an injury arising out of the rendering of or failure to render professional services by a healthcare provider . . . shall be filed within . . . [t]hree years of the date the injury was discovered." Md. Code. Ann., Cts. & Jud. Proc. § 5-109(a) (2020 Repl.). To determine when a limitations period begins to run, we typically invoke the discovery rule, which is "applicable in all civil actions." *Hecht v. Resolution Tr. Corp.*, 333 Md. 324, 335 (1994). Under that rule, a claim "accrues when the claimant in fact knew or reasonably should have known of the wrong." *Poffenberger v. Risser*, 290 Md. 631, 636 (1981). The rule has two prongs. First, "a plaintiff must have notice of the nature and cause of his or her injury" before the cause of action can accrue. *Windesheim v. Larocca*, 443 Md. 312, 327 (2015) (quoting *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 96 (2000)). Such notice includes not only actual notice but also implied or inquiry notice, which is "circumstantial evidence from which notice may be inferred." *Windesheim*, 443 Md. at 327 (quoting *Poffenberger*, 290 Md. at 637).

"Inquiry notice is triggered when the plaintiff recognizes, or reasonably should recognize, a harm—not when the plaintiff can successfully craft a legal argument and not

when the plaintiff can draft an unassailable and comprehensive complaint." *Fitzgerald v. Bell*, 246 Md. App. 69, 94 (2020) (quoting *Estate of Adams v. Cont'l Ins. Co.*, 233 Md. App. 1, 32 (2017)). A claimant who is on inquiry notice "will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation, regardless of whether the investigation has been conducted or was successful." *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 452 (2000). "[T]he limitations period is not tolled until [plaintiff's] investigation bears fruit; *it runs from the time [plaintiff] was on inquiry notice*." *Am. Gen. Assurance Co. v. Pappano*, 374 Md. 339, 356 (2003) (emphasis added).

The second prong of the discovery rule implicates "the nature of the knowledge the injured party must possess before the cause of action accrues," *State v. Copes*, 175 Md. App. 351, 375 n.12 (2007), and examines whether "after a reasonable investigation of facts, a reasonably diligent inquiry would have disclosed whether there is a causal connection between the injury and the wrongdoing," *id*. (quoting *Georgia-Pacific Corp. v. Benjamin*, 394 Md. 59, 90 (2006)).

In applying the discovery rule, the determination of when a party has notice may be a question "solely [ ] of law, solely [ ] of fact, or one of law and fact." *Estate of Adams*, 233 Md. App. at 37 (quoting *Poffenberger*, 290 Md. at 634). Where the determination "hinges on the resolution of disputed facts, . . . it is for the fact-finder to decide." *Moreland v. Aetna U.S. Healthcare, Inc.*, 152 Md. App. 288, 296 (2003). However, because "an inquiry notice analysis hinges upon what the plaintiffs can know and whether their actions

are reasonable," we may determine the date of notice as a matter of law when "there are no disputed material facts a [trier of fact] could find that would change that the appellants [had] inquiry notice." *Estate of Adams*, 233 Md. App. at 39-40; *see also Moreland*, 152 Md. App. at 298 (concluding that where the material facts were not in dispute, "the accrual date of the causes of action . . . was a legal issue for the court to decide").

Here, undisputed facts in the record establish that Mr. Ruggieri was on inquiry notice of the basis for his malpractice claim against Dr. Piontkowski no later than January 27, 2014. Mr. Ruggieri was under Dr. Piontkowski's care between December 2012 and January 2014, during which time Dr. Piontkowski extracted a decaying tooth, replaced it with two implants, and then replaced those implants with others, purportedly using an advanced implant technology. Dr. Piontkowski never completed the tooth restoration, however, because Mr. Ruggieri terminated the relationship after concluding that Dr. Piontkowski was incompetent. At his deposition, Mr. Ruggieri testified that, while he was still under Dr. Piontkowski's care, the implants "didn't look right to me" because they appeared to be too close together, that he raised that concern with Dr. Piontkowski on multiple occasions, and that Dr. Piontkowski was never able to provide an acceptable response. Instead, with each response Dr. Piontkowski provided, Mr. Ruggieri's "question increased more and more." As a result, after a visit on January 27, 2014, Mr. Ruggieri called Dr. Piontkowski's office and said that he did not intend to complete the restoration of his tooth with Dr. Piontkowski and would transition to a different doctor. Mr. Ruggieri never returned to Dr. Piontkowski's care.

Mr. Ruggieri testified further that, while examining Mr. Ruggieri's mouth in December 2012, Dr. Piontkowski had stated that he "d[id]n't know what's going on in that area," a comment similar to one he had made to Mr. Ruggieri's wife, who had also left Dr. Piontkowski's care. When Mr. Ruggieri later put those statements together, it caused him to conclude that "this guy was just taking me to the cleaners." He also explained that "the reason I was leaving him was not for pricing or to have someone in network.[1] It was to go to somebody that was competent, or at least g[a]ve me a straight story."

After leaving Dr. Piontkowski's care, Mr. Ruggieri saw multiple dentists before finding one who, in August 2015, informed him that Dr. Piontkowski's treatment was improper and could potentially result in further health problems. Nonetheless, Mr. Ruggieri did not file his negligence claim against Dr. Piontkowski until December 2017, more than three years after he was on inquiry notice.

Mr. Ruggieri's own deposition testimony, uncontradicted by any other evidence in the record, establishes beyond any genuine dispute that he was on inquiry notice of the harm that served as the basis for his complaint against Dr. Piontkowski no later than January 27, 2014. The circuit court thus did not err and we will affirm.

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

[1] A letter Dr. Piontkowski's office sent after Mr. Ruggieri announced his intent to leave Dr. Piontkowski's care suggested that the reason Mr. Ruggieri provided at the time was that he wanted to complete his care with an in-network dentist. At his deposition, Mr. Ruggieri explained that if he provided that explanation at the time, it was just to be polite and "was not true."