

Circuit Court for Baltimore County
Case No. 03-C-16-011274

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3447

September Term, 2018

COLIN HUDGINS, *ET AL.*

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Shaw Geter,

JJ.

Opinion by Nazarian, J.

Filed: March 23, 2020

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 27, 2013, Colin Hudgins suffered serious injuries from a physical altercation with another juvenile while he waited in a holding cell in the Circuit Court for Anne Arundel County for a hearing to begin. At the time, Mr. Hudgins was a juvenile in the custody of the Department of Health and a patient at Spring Grove Hospital Center (“Spring Grove”). On August 12, 2016, Mr. Hudgins and his mother, Andrea Smith, filed a healthcare malpractice claim and a claim for pre-majority medical expenses against the State of Maryland in the Health Care Alternative Dispute Resolution Office (“HCADRO”). On October 27, 2016, they waived arbitration and, later, on November 7, 2016, filed a complaint against the State in the Circuit Court for Baltimore County (where Spring Grove is located). The court granted summary judgment in favor of the State on the ground that Mr. Hudgins and Ms. Smith failed to file their complaint in a timely manner under the Maryland Tort Claims Act (“MTCA”), Maryland Code (1984, 2014 Repl. Vol.), § 12-106(b)(3) of the State Government Article (“SG”). We affirm.

I. BACKGROUND

Unless otherwise indicated, the following facts are taken from the operative complaint. On August 23, 2013, when he was fifteen years old, the Circuit Court for Anne Arundel County remanded Mr. Hudgins to the custody of the Department of Health. The court also ordered an inpatient evaluation for Mr. Hudgins at Spring Grove, and ordered that he be evaluated before he returned to the circuit court for a hearing the following month. He was admitted to Spring Grove a week later.

When he was admitted to Spring Grove, Mr. Hudgins “was considered at risk for

self injurious behaviors and was placed on constant observation and self injurious behavior precautions.” The staff at Spring Grove observed that Mr. Hudgins was “irritable and required as needed medication for purposes of behavior control.” They also noted that Mr. Hudgins had a “history of interpersonal intimidation and aggressive behavior that placed him at a chronic higher risk for violence,” a “history of self-injurious behavior,” and “frequent episodes of unmanageable behaviors.” Mr. Hudgins’s psychiatrist believed that his “quick escalation to destructive behavior made going back home a risky situation.” (internal quotation marks omitted).

On September 8, 2013, Dr. Maximilian T. Badoy evaluated Mr. Hudgins and “placed [him] on one on one observation,” which meant that he was to be monitored at all times “due to the danger they pose to themselves and others.” On September 26, 2013, one-on-one observation was renewed through a physician’s order.

On the morning of September 27, 2013, Dr. Eliana Santoro co-signed a Leave of Absence Order allowing Mr. Hudgins to be transferred to the custody of the Department of Juvenile Services (“DJS”) at 8:20 a.m. for a hearing later that day. The order discontinued the one-on-one observation temporarily. Around 11:00 a.m., Spring Grove transferred custody of Mr. Hudgins to a DJS transporter, who took him to the circuit court, and he “remained in joint custody of the DJS and the Anne Arundel County Sheriff’s Department.”

While waiting for the start of his hearing at the circuit court, Mr. Hudgins was placed in a holding cell with several other juveniles. He got into a physical altercation with one of

the other juveniles in the holding cell, and “suffered severe and permanent physical injuries during the course of the physical encounter.” The HCADRO filing alleged that the physical encounter unfolded rapidly:

15. At the conclusion of the hearing, Claimant Hudgins was placed in holding cell in lock-up with several other juveniles. Claimant Hudgins and the other juveniles had leg irons on, but were not handcuffed.

16. While in the holding cell Mr. Hudgins was cracking his knuckles. Another juvenile perceived Claimant Hudgins actions as a threat and made a comment along the lines of “are you trying to start something?” Claimant Hudgins indicated that he was merely cracking his knuckles. The other juvenile approached Claimant Hudgins, threw Claimant Hudgins against the metal bench in the holding cell, and struck Claimant Hudgins multiple times in the face.

17. As a direct result of the attack perpetrated against Claimant Hudgins, Claimant Hudgins lost consciousness, sustained a complex fracture of the right femur requiring surgical repair, and facial lacerations.

On August 12, 2016, Mr. Hudgins and his mother, Ms. Smith, filed claims against Spring Grove in the HCADRO. Mr. Hudgins was the claimant for Count 1, which alleged medical malpractice against Spring Grove. Ms. Smith was the claimant for Count 2, which sought recovery for “sponsor[ing] her minor son’s necessary medical care.” The State moved to dismiss the claims. On October 27, 2016, Mr. Hudgins and Ms. Smith opposed the State’s motion and simultaneously filed an election for waiver of arbitration.

On November 7, 2016, Mr. Hudgins and Ms. Smith filed their complaint in the circuit court. The complaint alleged the same counts as the HCADRO claim, but also alleged negligence on the part of DJS. The State moved to dismiss, and the court denied the motion. After discovery, the State moved for summary judgment on the ground that

Mr. Hudgins and Ms. Smith “fail[ed] to comply with a condition precedent to the State waiving its sovereign immunity under the [MTCA].” The circuit court granted the motion and entered judgment in favor of the State. Mr. Hudgins and Ms. Smith noted this timely appeal. The State cross-appeals. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Hudgins and Ms. Smith raise two issues in their brief,¹ but they really reduce to one: whether the circuit court erred in granting summary judgment for the State on the basis that the HCADRO filing didn’t satisfy the condition precedent to the waiver of immunity under the MTCA. The State cross-appeals, arguing that the circuit court should have granted its motion to dismiss on two grounds.² *First*, the State argues that Maryland

¹ Mr. Hudgins and Ms. Smith phrased their Questions Presented as follows:

1. Did the trial court improperly conclude that the three year limitations period set forth in Maryland Tort Claims Act §12-106(b)(3) was a condition precedent to the waiver of immunity?
2. Did the trial court improperly conclude that the timely filing in the Health Care Alternative Dispute Resolution Office (HCADRO) did not constitute the filing of an action?

² The State phrased its Questions Presented in its cross-appeal as follows:

1. Does § 5-609 of the Courts Article, which governs a mental health provider’s duty to prevent a patient’s violent behavior, preclude Mr. Hudgins’ claims where Mr. Hudgins did not indicate an intention to inflict harm on a specified victim?
2. Do Mr. Hudgins’ claims, sounding in negligence, fail as a matter of law because the State had no duty to protect Mr. Hudgins from his own aggression?

Code (1973, 2013 Repl. Vol.), § 5-609 of the Courts & Judicial Proceedings Article (“CJ”), precludes Mr. Hudgins’s claims because he didn’t indicate a specific intent to inflict harm upon anyone. CJ § 5-609 provides that healthcare providers are not liable for the violent acts of a patient unless they knew or should have known of the patient’s propensity for violence through certain actions that specifically indicate an intent to perpetrate the violence. *Second*, the State argues that even if CJ § 5-609 doesn’t apply to this case, the State has no duty to protect Mr. Hudgins from his own acts of aggression. We hold that the circuit court granted summary judgment properly in favor of the State and affirm, and we don’t reach the issues raised in the State’s cross-appeal.

Summary judgment is appropriate when “there is no genuine dispute of material fact” and the moving party “is entitled to judgment as a matter of law.” Md. Rule 2-501(f). We review *de novo* the circuit court’s decision to grant summary judgment. *Reiner v. Ehrlich*, 212 Md. App. 142, 151 (2013). In so doing, we “consider[] the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Blackburn Ltd. P’ship v. Paul*, 438 Md. 100, 107–08 (2014) (*quoting Myers v. Kayhoe*, 391 Md. 188, 203 (2006)). Summary judgment is improper if the plaintiff’s claim is “supported by more than a scintilla of evidence . . . upon which [a] jury could reasonably find for the plaintiff.” *Id.* at 108 (*quoting Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738–39 (1993)).

The doctrine of sovereign immunity “prohibits suits against the State or its entities absent its consent.” *Magnetti v. Univ. of Md.*, 402 Md. 548, 557 (2007). “[N]o contract or

tort suit can be maintained . . . unless the General Assembly has specifically waived the doctrine.” *Id.* (quoting *Stern v. Bd. of Regents*, 380 Md. 691, 701 (2004)). The doctrine applies to the State, its officers, and its agencies, including personnel sued in their official capacity. *Stern*, 380 Md. at 701; SG § 12-105.

Maryland has waived its sovereign immunity for tort actions through the MTCA. SG § 12-104. But when the State waives its sovereign immunity, the action must be “filed within 3 years after the cause of action arises.” SG § 12-106(b)(3). This three-year deadline “is not a ‘mere’ or ‘ordinary’ statute of limitations, but is *both* a statute of limitations and—along with SG § 12-106(b)(1) [which requires notice to be filed with the treasurer within one year]—a condition precedent to the waiver of sovereign immunity.” *Higginbotham v. Pub. Serv. Comm’n of Md.*, 412 Md. 112, 128 (2009). In other words, the three-year period “is a condition to the right itself and not merely to the remedy.” *State v. Sharafeldin*, 382 Md. 129, 148 (2004).

Mr. Hudgins and Ms. Smith argue that “the filing in the HCADRO was timely as it constituted the filing of an action for purposes of [SG §] 12-106,” and tolled the three-year limitations period. But the operative claim isn’t a medical malpractice claim—it’s a negligence claim. They conceded as much in their opposition to the State’s motion to dismiss at HCADRO: “Claimants will accept [Spring Grove’s] assertion that the circumstances and injuries described in Mr. Hudgins’ Claim were not ‘medical injuries’ arbitrable under the Health Care Malpractice Claims Act.”

But even if we assume that their claims did qualify as medical malpractice claims,

filing in the HCADRO didn't satisfy the condition precedent under the MTCA to file an *action* within three years. SG § 12-106(b)(3). The incident occurred on September 27, 2013. Mr. Hudgins had three years from that date to file suit in the circuit court. But to the extent filing in the HCADRO served as a condition precedent to filing an action in circuit court, Mr. Hudgins and Ms. Smith could easily have met that burden. They had the ability to waive arbitration unilaterally, and could have done so essentially simultaneously with filing their claim in the HCADRO. They filed their claims in the HCADRO on August 12, 2016, and had they waived arbitration and filed suit in the circuit court any time before September 27, 2016—a full six weeks—their complaint would have been timely. Instead, they opted instead to litigate the case in HCADRO into November, and opted to waive arbitration only after responding to the State's motion to dismiss.

By waiting to file their action against the State in circuit court until more than three years after their claims accrued, Mr. Hudgins and Ms. Smith failed to satisfy the condition precedent to the State's waiver of sovereign immunity, and the passage of time extinguished their right to sue the state under the MTCA. The circuit court granted the State's motion for summary judgment correctly.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**