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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Marvin H. Dukes, III, Circuit Court Judge

Lower Court Case No. 2023-CP-10-00914

Lisa Renee Sample, Appellant,

v.

Blood Connection, Inc. and Delisha K. English,

of which Blood Connection, Inc. is the Respondent.

Appellate Case No. 2025-000941

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in granting summary judgment in favor of the Defendant where there was a genuine issue of material fact as to when the statute of limitations began to run?

STATEMENT OF THE CASE

This is an appeal from an order granting the Defendant's motion for summary judgment.

Lisa Sample filed a summons and complaint for medical malpractice against Blood Connection, Inc. and Delisha English. The complaint alleged that the Defendants were negligent in performing a blood draw on Ms. Sample and that Blood Connection was negligent in the hiring, training, and supervision of its lab technicians and phlebotomists. (R. p. 22). Ms. English was later dismissed from the case by joint stipulation of the parties.

The Defendant, Blood Connection, answered the complaint and filed a motion for summary judgment. The circuit court heard arguments on the motion on December 3, 2024. At that hearing, Greg Keith appeared on behalf of Ms. Sample, and Lillian Keeling appeared on behalf of the Defendant.

The circuit court granted the Defendant's motion for summary judgment and denied Ms. Sample's motion to reconsider.

STANDARD OF REVIEW

"Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure." *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024) (citing *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (citing *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)).

Summary judgment is not proper "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Middleborough Horizontal Prop. Regime Council of Co.-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Nelson v. Charleston Cty. Parks & Rec. Comm'n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004).

STATEMENT OF FACTS

On January 2, 2020, Ms. Sample stopped at her gym on her way home from work to take an exercise class. Outside of her gym, someone was soliciting people to donate blood to the Blood Connection and Ms. Sample agreed to give a donation after her class. (R. p. 53, ll. 16 – 22). After Ms. Sample's exercise class ended, she went into the Blood Connection's mobile unit that was set up behind the building and attempted to donate blood. (R. p. 53, ll. 23 – 24). Ms. Sample agreed to donate blood because she believed "it was the right thing to do." (R. p. 70, ll. 1 – 6). Although Ms. Sample testified that she may have donated blood before when she was in college, she had not donated blood since then. (R. p. 70, ll. 7 – 10). Ms. Sample was forty years old at the time of the blood draw. (R. p. 55, ll. 4 – 7).

Ms. Sample recalled that when the phlebotomist put the needle in her arm, "it drove in really, really hard," and that she "immediately . . . felt a sharp pain that went down into [her] right hand." Ms. Sample also felt a "burning cold sensation, and then numbness." Ms. Sample believed something was "not right" and asked them to take the needle out of her arm. (R. p. 74 ll. 3 – 19). At that point a manager came and took the needle out of Ms. Sample's arm. (R. p. 74, ll. 20 – 25). After the needle was removed, Ms. Sample had a "golf ball kind of swollen area" but the manager told Ms. Sample that "that was normal based on what had occurred." (R. p. 83, ll. 13 – 20). The swelling was gone by the following day, but the area was still bruised. (R. p. 85, ll. 9 – 18).

A "couple of months" after the attempted blood draw, Ms. Sample started experiencing intermittent numbness and tingling in her right hand and arm. (R. p. 87, l. 11 – p. 88, l. 25). Ms. Sample spent more than a year seeing different doctors who tried to figure out the cause of her symptoms. (R. pp. 150 – 154). It wasn't until May of 2021 when Dr. Appleby confirmed that Ms. Sample's symptoms were caused by the attempted blood draw. (R. pp. 158 – 160). Prior to that,

Ms. Sample's doctors had suggested that her symptoms were being caused by carpal tunnel or Raynaud's syndrome, and not the attempted blood draw. (R. p. 112, l. 10 – p. 113, l. 14).

Ms. Sample ultimately required surgery to alleviate her symptoms. After the surgery, the surgeon explained to Ms. Sample that she had compression of her ulnar nerve which he had to "release." (R. p. 114, l. 21 – p. 116, l. 16). The surgery reduced Ms. Sample's symptoms, but she continued to experience intermittently cold fingers and arm numbness when her arm was bent. (R. p. 120, l. 22 – p. 121, l. 3).

Ms. Sample filed her lawsuit on February 22, 2023. This was three years and fifty-one days after the attempted blood draw but only one year and nine months after Dr. Appleby confirmed the cause of her symptoms was the attempted blood draw. (R. pp. 158 – 160).

ARGUMENT

The circuit court erred in granting summary judgment in favor of the Defendant because there was a genuine issue of material fact as to when the statute of limitations began to run.

Relevant Facts

The Defendant moved for summary judgment arguing that Ms. Sample did not file her lawsuit within the three-year statute of limitations. Specifically, the Defendant maintained that the statute of limitations began to run on January 2, 2020, the day of the attempted blood draw. Because her lawsuit was not filed until February 22, 2023, the Defendant argued that her lawsuit was barred by the statute of limitations. (R. pp. 34 – 35). The Defendant's argument was based primarily on Ms. Sample's interrogatory answers and deposition testimony. Specifically, Ms. Sample explained that she "felt instantaneous pain, and the sensation that a nerve had been hit" at the time of the attempted blood draw. Furthermore, the Defendant argued that Ms. Sample recalled feeling a "burning cold sensation" upon the insertion of the needle and that she knew something "wasn't right." (R. pp. 35 – 36).

However, the Defendant acknowledged that Ms. Sample received several different diagnoses by multiple different healthcare providers during her subsequent medical treatment. *Id*. at 3. The Defendant relied primarily on this Court's decision in *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 608 S.E.2d 459 (Ct. App. 2005) to argue that because Ms. Sample felt immediate pain, she was on notice the day of the attempted blood draw that she might have a claim against the Defendant. (R. pp. 38 -39).

Counsel for Ms. Sample responded by arguing that the statute of limitations did not begin to run until much later. Specifically, it wasn't until December 9, 2020, that Dr. Ernst indicated that Ms. Sample's symptoms were not consistent with carpel tunnel syndrome and first ordered tests to

determine whether her nerve injury was related to the attempted blood draw. (R. p. 147; R. p. 150). When Ms. Sample was seen again on February 3, 2021, Dr. Ernst recommended that she be seen by a vascular doctor to determine if she may be suffering from Raynaud's syndrome. (R. p. 152). Furthermore, it wasn't until Ms. Sample saw Dr. Appelby on May 24, 2021, when she was informed that her symptoms were being caused by the attempted blood draw and not Raynaud's syndrome. (R. p. 158). Counsel for Ms. Sample argued that there was a genuine dispute of material fact as to when Ms. Sample could have reasonably discovered that she had a claim against the Defendant, making summary judgment improper.

The circuit court heard arguments on the Defendant's motion for summary judgment on December 3, 2024. Counsel for the Defendant again cited *Knox* in arguing that the statute of limitations begins to run when a reasonable person is on notice that they have a potential claim even if they are not aware of the full extent of their injuries. (R. p. 199, l. 20 – p. 201, l. 23). Counsel additionally argued that Ms. Sample's negligent hiring claim against the Defendant was also barred by the statute of limitations for the same reason. (R. p. 202, ll. 8 – 16).

Counsel for Ms. Sample agreed that the applicable statute of limitations was three years and that Ms. Sample filed her lawsuit on February 22, 2023. (R. p. 207, ll. 5 – 10). Counsel for Ms. Sample also pointed to this Court's opinion in *Knox* where this Court made clear that the mere presence of pain or discomfort ordinarily is not enough to trigger the statute of limitations in a medical malpractice action. (R. p. 207, ll. 11 – 18). Furthermore, Ms. Sample testified in her deposition that she didn't know that her symptoms were being caused by the attempted blood draw and that she consistently sought medical treatment to determine the cause of her pain. (R. p. 207, ll. 19 – 25). Counsel for Ms. Sample pointed out that she was informed by multiple health care providers who she saw following the attempted blood draw that her symptoms may be attributable

to carpal tunnel syndrome or Raynaud's syndrome. (R. p. 208, l. 1 – p. 209, l. 12). Counsel stressed that it wasn't until Ms. Sample saw Dr. Appelby in May of 2021 that Raynaud's syndrome was ruled out and she was finally informed by a doctor that her injuries were caused by the attempted blood draw. (R. p. 209, l. 13 – p. 210, l. 11). Counsel for Ms. Sample also pointed out that a medical malpractice action cannot be filed without the affidavit of an expert and that it was a question of fact for the jury as to when she should have discovered her injury. (R. p. 210, l. 12 – p. 211, l. 18).

The circuit court asked Counsel for Ms. Sample how he "gets around" the fact that Ms. Sample felt immediate pain during the attempted blood draw and suspected that she had a nerve injury. (R. p. 211, ll. 19 – 23). Counsel responded that Ms. Sample might have suspected the blood draw was the cause of her subsequent symptoms but that she saw multiple physicians after the fact who told her that the blood draw was not the cause of her problems. (R. p. 211, l. 24 – p. 212, l. 11). Counsel argued that this created an issue of material fact that was a question for the jury to answer. (R. p. 212, l. 17 – p. 213, l. 3).

In its final order granting summary judgment to the Defendant, the circuit court found that the statute of limitations began to run on January 2, 2020, as a matter of law. (R. p. 3). The circuit court based its conclusion on Ms. Sample's deposition testimony and interrogatory answers in which she confirmed that she experienced pain during the attempted blood draw and suspected that her nerve had been damaged. (R. pp. 2 – 3). The circuit court acknowledged that Ms. Sample had received several different diagnoses from various medical providers after the attempted blood draw. (R. p. 3). However, the circuit court relied on this Court's decision in *Knox* to conclude that "regardless of whether Ms. Sample may have learned more about her purported injuries at a subsequent time, she was on notice on January 2, 2020 that she might have a claim against [the

Defendant]." (R. pp. 5 – 6). Accordingly, the circuit court granted summary judgment to the Defendant.

Ms. Sample filed a motion to reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Counsel for Ms. Sample again pointed out that she could not file a lawsuit against the Defendant for medical malpractice without an expert diagnosis. (R. pp. 163 – 164). And notwithstanding the Defendant and the circuit court's downplaying of the fact that Ms. Sample "learned more" about her injuries after the fact, in the immediate aftermath of the attempted blood draw, what Ms. Sample "learned" about her injuries was that they were *not caused* by the attempted blood draw. Ms. Sample's follow-up medical appointments led her to believe that the symptoms she was experiencing were related to Raynaud's syndrome and were not the result of the attempted blood draw by the Defendant. (R. pp. 164 – 165; R. p. 112, l. 10 – p. 113, l. 14). Ms. Sample actively sought treatment for her injuries and to discover their cause, only to be informed by multiple physicians that her symptoms were being caused by something other than the attempted blood draw. (R. pp. 164 – 165).

Counsel for Ms. Sample argued that a reasonable person who has been provided with this information by their health care providers would not believe they had a claim for medical malpractice. (R. pp. 165 – 167). Specifically, Counsel maintained that the earliest time Ms. Sample was on notice that she had a potential claim against the Defendant was when her doctors informed her that her symptoms were related to the attempted blood draw. Prior to that time, Ms. Sample was being informed of the opposite, that her symptoms were not related to the blood draw. Under those facts, a jury could conclude that Ms. Sample would not have been on notice that she had a claim against the Defendant until long after January 2020. (R. pp. 167 – 168).

The circuit court denied Ms. Sample's motion to reconsider. (R. pp. 9 – 14).

Discussion

The circuit court erred in granting summary judgment to the Defendant. Ms. Sample's claims against the Defendant for the negligently performed blood draw and the negligent hiring, training, and supervision of the lab technicians and phlebotomists were filed well within three years of when a reasonable person would have discovered they had a claim.

Section 15-3-545(A) of the South Carolina Code requires civil actions for medical malpractice to be "commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered." Actions for negligent hiring, training, and supervision are subject to the same three-year limitations period. *See Brown v. Pearson*, 326 S.C. 409, 418, 483 S.E.2d 477, 482 (Ct. App. 1997) (applying the three-year statute of limitations in S.C. Code § 15-3-535 to a negligent supervision claim). "Under the discovery rule, the statute begins to run when 'the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.'" *McMaster v. Dewitt*, 411 S.C. 138, 145, 767 S.E.2d 451, 454 (Ct. App. 2014) (quoting *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 570, 608 S.E.2d 459, 462 (Ct. App. 2005)).

The statute of limitations "does not necessarily run from the date of the negligent act, but from when the injury resulting from the negligent act is discovered or may be discovered by the exercise of 'reasonable diligence.'" *Knox*, 362 S.C. at 570, 608 S.E.2d at 462 (quoting *Joubert v. S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 190-91, 534 S.E.2d 1, 8 (Ct. App. 2000)). Reasonable diligence means "that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice

that some right of his has been invaded or that some claim against another party might exist." *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981).

"The date on which discovery should have been made is an objective, not subjective, question." *Joubert*, 341 S.C. at 191, 534 S.E.2d at 9 (citing *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995)). "[T]he fact that the injured party does not comprehend the full extent of his injuries is immaterial." *Knox*, 362 S.C. at 570-71, 608 S.E.2d at 462 (citing *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996)). However, "[w]hen there is conflicting testimony regarding the time discovery should have occurred, it becomes an issue for the jury to decide." *Chabek v. Anmed Health*, 442 S.C. 61, 73, 897 S.E.2d 58, 64 (Ct. App. 2023) (citing *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962)).

Furthermore, "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." S.C. Code § 15-79-125(A). Section 15-36-100(B) requires the expert affidavit to "specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit."

In *McMaster v. Dewitt*, this Court affirmed the circuit court's grant of summary judgment based on the statute of limitations in a medical malpractice case. 411 S.C. at 141, 767 S.E.2d at 452. McMaster alleged he had been overprescribed Adderall for his attention deficit disorder by Dr. Dewitt. McMaster was hospitalized twice for being in a "paranoid and psychotic state"; once on May 13, 2008, and again on June 25, 2008. *Id*. at 142, 767 S.E.2d at 453. McMaster testified at his deposition that Dr. Dewitt "told him in May the cause of his psychosis" was "Adderall induced

psychosis." *Id*. However, McMaster did not file his lawsuit until June 16, 2011. McMaster only mentioned his June 2008 hospitalization in his complaint. *Id*.

The Defendants in *McMaster* moved for summary judgment arguing that the statute of limitations began to run in May of 2008. Days before the summary judgment hearing, McMaster changed his story about when he first learned that he had Adderall induced psychosis. Even though McMaster had previously testified that Dr. Dewitt told him he had Adderall induced psychosis, McMaster submitted an affidavit to the circuit court claiming that "[n]either Dr. Dewitt nor anyone else [in May of 2008] suggested that Adderall had caused [him] to have paranoid psychosis." *Id*. (alterations omitted). The circuit court refused to consider McMaster's affidavit finding that it was a "sham," and granted summary judgment based on McMaster's deposition testimony that Dr. Dewitt had informed McMaster in May of 2008 that he was suffering from Adderall induced psychosis. *Id*. at 143, 767 S.E.2d at 453

In affirming the circuit court's grant of summary judgment in *McMaster*, this Court found it significant that McMaster had testified three times in his deposition that he was aware in May of 2008 that he was hospitalized for Adderall induced psychosis. *Id*. at 145, 767 S.E.2d at 454. In fact, it was Dr. Dewitt, the same doctor that prescribed McMaster the Adderall and the same doctor that McMaster ultimately sued, who told McMaster that he had Adderall induced psychosis. *Id*. at 146-47, 767 S.E.2d at 455. This Court found that "McMaster's May hospitalization, *coupled with his knowledge that it was induced by Adderall*, put him on notice of a claim against Dr. Dewitt and commenced the running of the statute of limitations." *Id*. at 148, 767 S.E.2d at 456 (emphasis added).[1]

[1] The *McMaster* Court also concluded that the circuit court acted within its discretion in refusing to consider McMaster's sham affidavit which contradicted his deposition testimony. *McMaster*, 411 S.C. at 149, 767 S.E.2d at 456 ("A trial court may exclude an affidavit when it was submitted

Ms. Sample's situation is very different from McMaster's. McMaster was informed by the very doctor he attempted to sue of the exact nature and cause of his injury. When Ms. Sample sought medical treatment after the attempted blood draw, she was informed that the nature and cause of her injury was something else. (R. pp. 150 – 154). True, Ms. Sample experienced some pain and discomfort during the attempted blood draw. But a person of common knowledge and experience would not believe they had a claim against the phlebotomist when they are informed at follow-up appointments with physicians that the cause of their injury was not the attempted blood draw but rather something else entirely.

In this case, the circuit court relied heavily on this Court's decision in *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 608 S.E.2d 459 (Ct. App. 2005). And although the *Knox* Court affirmed the granting of summary judgment based on the statute of limitations, this Court made clear that "[t]he mere presence of pain or discomfort, to be sure, will ordinarily not serve to trigger the commencement of the applicable statute of limitations." *Id.* at 571, 608 S.E.2d at 462. Furthermore, while the facts in *Knox* have some similarities to Ms. Sample's case, there are significant differences that necessarily affect the legal analysis. For instance, Knox testified that he had "plenty of I.V.s before" and knew something was "'different' about this one because of the pain, the reaction of his hand, and the nurse's admission to 'hitting the wrong thing.'" *Id*. at 568, 608 S.E.2d at 461. Furthermore, just over two months after the I.V., Knox was seen by an orthopedic surgeon who "confirmed Knox's suspicions" that the botched I.V. had caused permanent damage to his radial nerve. *Id*. This Court found that, because Knox had undergone "plenty of I.V.s before,"

'to contradict that party's own prior sworn statement' in 'an attempt to create a sham issue of material fact'" (quoting *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004)).

the abnormal pain he experienced should have put him on notice that he had a claim against the hospital even though his suspicions weren't confirmed until later. *Id*. at 571, 608 S.E.2d at 462.

Ms. Sample did not have extensive experience with blood donations. In fact, she testified that she might have donated once in college but had never donated since then, and Ms. Sample was forty years old at the time of the attempted blood draw. (R. p. 55, ll. 4 – 7; R. p. 70, ll. 7 – 10). Having donated blood on one previous occasion several decades ago is a far cry from what the plaintiff in *Knox* testified too. Additionally, after the needle was removed from Ms. Sample's arm, she had a "golf ball kind of swollen area," but the manager told her that "that was normal based on what had occurred." (R. p. 83, ll. 13 – 20). This assurance by the manager stands in stark contrast to *Knox* where the nurse admitted to "hitting the wrong thing." *Knox*, 362 S.C. at 568, 608 S.E.2d at 461.

Even more important is the fact that when Ms. Sample sought medical treatment after the attempted blood draw to asses her symptoms, her doctors told her that her symptoms were likely the result of carpal tunnel or Raynaud's syndrome. (R. p. 112, l. 10 – p. 113, l. 14). Thus, unlike the plaintiff in *Knox*, Ms. Sample's suspicions were *not confirmed*. The pain Ms. Sample experienced, coupled with her doctors telling her that her symptoms were not related to the blood draw, would not have put a reasonable person on notice that they had a claim for medical malpractice. This is especially true where a plaintiff cannot file a medical malpractice action without an accompanying expert affidavit identifying at least one negligent act and the specific cause. *See* S.C. Code §§ 15-79-125(A) & 15-36-100(B). A reasonable person in Ms. Sample's shoes would not know that they had a claim for medical malpractice until their symptoms were connected to the negligence by a doctor.

Ms. Sample's situation is more like the situation this Court faced in *Chabek v. Anmed Health*, 442 S.C. 61, 897 S.E.2d 58 (Ct. App. 2023). In *Chabek*, the plaintiff had spine surgery, after which she experienced worsening pain in her right hip and leg. *Id*. at 66, 897 S.E.2d at 60. Over the course of several months, the plaintiff was seen by health care providers for follow-up visits who continued to suggest that she was early in the surgical recovery process, and that pain and discomfort was normal. The plaintiff's health care providers informed her that if her symptoms did not get better, they would run additional tests to determine what was wrong. *Id*. at 66-67, 897 S.E.2d at 60-61. It wasn't until a year after the plaintiff's initial surgery that she saw a new doctor who conducted new imaging and discovered that her ongoing pain was caused by the negligently performed surgery. *Id*. at 68, 897 S.E.2d at 61.

In *Chabek*, the circuit court granted summary judgment to the defendants finding that the plaintiff had filed her lawsuit after the statute of limitations. This Court reversed. Specifically, this Court agreed with the plaintiff that the earliest she was on notice that she might have a claim for medical malpractice was when she was informed by her new doctor that her pain was the result of the negligently performed surgery. *Id*. at 72, 897 S.E.2d at 64. This Court noted that even though the plaintiff continued to experience pain following the surgery, she was being regularly seen by doctors for follow-up appointments, none of whom suggested her pain was the result of negligence. *Id*. at 73-74, 897 S.E.2d at 64. This Court further noted that the plaintiff in *Chabek* "was actively engaged in seeking to discover the cause of her pain" and that "[s]he did not sit on her hands and idly wait until years later to investigate her pain to only then discover potential negligence." *Id*. at 75, 897 S.E.2d at 65. This Court concluded that under these facts, the earliest a reasonable person would have been on notice of a potential claim for medical malpractice was when she was informed by a doctor that her pain was related to medical negligence. *Id*.

As in *Chabek*, the earliest Ms. Sample could be put on notice of a potential claim was when her doctors informed her that her symptoms were related to medical negligence, i.e., the botched attempted blood draw. Only then would a reasonable person have been put on notice that some claim against the Defendant may exist. Ms. Sample's ability to bring a medical malpractice claim was dependent upon her ability to show medical malpractice through an expert medical diagnosis.

As mentioned earlier, under Section 15-79-125, before a complaint alleging malpractice may be filed, the plaintiff must file a Notice of Intent to File Suit with a sworn affidavit from a qualified medical witness who will serve as an expert on the plaintiff's behalf. The affidavit must specify at least one example of how the defendant's negligence resulted in harm to the patient. Ms. Sample needed a medical expert to provide a sworn affidavit attesting to a particular breach of care that proximately caused her particular damages.

There was no expert medical evidence of Ms. Sample's symptoms being related to the attempted blood draw until, at the very earliest, December 9, 2020. (R. p. 150). Additionally, Ms. Sample testified in her deposition that the first time she was told that the attempted blood draw resulted in an injury to her nerve was by Dr. Appleby. (R. p. 119, ll. 18 – 25). Dr. Appleby's first treatment assessment that connected Ms. Sample's nerve injury to the attempted blood draw was on May 24, 2021. (R. pp. 158 – 160). Accordingly, the statute of limitations on Ms. Sample's claims should not have begun until December 9, 2020, at the earliest and May 24, 2021, at the latest. Answering this question is a job for a jury.

The circuit court erred in finding that the statute of limitations began to run on the date of the attempted blood draw and further erred by granting summary judgment in favor of the Defendant. This Court should reverse the granting of summary judgment and remand this case for a jury trial.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the circuit court's order granting summary judgment in favor of the Defendants and remand for a jury trial.

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This 30th day of December 2025.