IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 8, 2017 Session

DEBORAH LACY v. VANDERBILT UNIVERSITY MEDICAL CENTER, ET AL.

Appeal from the Circuit Court for Davidson County
No. 15C-3855 Thomas W. Brothers, Judge

No. M2016-02014-COA-R3-CV

Plaintiff filed this pro se action against a hospital and members of its medical staff for injuries sustained when she was allegedly beaten and misdiagnosed while receiving medical treatment. The trial court dismissed plaintiff's complaint based on her failure to comply with procedural requirements of the Tennessee Health Care Liability Act ("THCLA"). On appeal, plaintiff contends that she was not required to comply with the THCLA's procedural requirements because her complaint did not assert health care liability claims. Having reviewed the complaint, we conclude that plaintiff's claims related to the alleged misdiagnosis are health care liability claims, while her claims related to the alleged beatings are not. We affirm dismissal of plaintiff's health care liability claims but reverse dismissal of her non-health care liability claims.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part; Reversed in Part; and Remanded

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which RICHARD H. DINKINS and W. NEAL MCBRAYER, JJ., joined.

Deborah Lacy, Madison, Tennessee, Pro se.

Sara F. Reynolds and Ashley B. Waddle, Nashville, Tennessee, for the appellees, Vanderbilt University Medical Center, Vanderbilt University Medical Center Department of Radiology, Geremiha Emerson, and Bethany Bowman.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

On October 21, 2015, Deborah Lacy filed a complaint in the Davidson County Circuit Court against Vanderbilt University Medical Center ("VUMC"), Dr. Geremiha Emerson, and Bethany Bowman (together, "Defendants").[1] The complaint alleges that Dr. Emerson, Ms. Bowman, and other unidentified members of VUMC's medical staff "beat" Ms. Lacy several different times while she was a patient in the VUMC emergency department on October 22, 2014. Specifically, Ms. Lacy alleges that "Nurse Bethany Bowman . . . and the Resident Physician on duty that evening Geremiha Emerson beat me from the feet [to the] neck" while she was in the hallway. She alleges that Ms. Bowman later "beat the left side of [her] arm after [she] was put in the hospital bed." She also alleges that an unidentified radiology technician "beat her on the right shoulder hard as a man can punch 3 times" as she stood to get out of her wheelchair following a CT scan. In addition to the allegations that Ms. Lacy was beaten, the complaint also alleges that the radiology technician misdiagnosed Ms. Lacy. Specifically, the complaint alleges that "by the Radiology [technician] not giving Plaintiff Lacy the correct diagnosis[,] Plaintiff Lacy went home and gave her son the wrong medication . . . causing him to have to seek Medical Care[.]"

Defendants filed a motion to dismiss Ms. Lacy's complaint pursuant to Tennessee Rule of Civil Procedure 12.02(6). Defendants argued that all of the claims in Ms. Lacy's complaint fell within the THCLA's definition of a health care liability action. Accordingly, they argued that the complaint should be dismissed in its entirety based on Ms. Lacy's failure to comply with the THCLA's pre-suit notice and certificate of good faith requirements. *See* Tenn. Code Ann. §§ 29-26-121 to -122 (2012 & Supp. 2016). Ms. Lacy filed a handwritten response to the motion in which she argued that her claims were not governed by the THCLA.

On February 9, 2016, the trial court entered an order granting Defendants' motion to dismiss in part. The trial court's order explained that the motion to dismiss was denied with respect to "Plaintiff's claims of intentional assault unrelated to the provision of medical treatment" but granted with respect to all other claims based on Ms. Lacy's failure to comply with the THCLA. Shortly thereafter, Defendants filed an answer denying the substantive allegations of Ms. Lacy's complaint. On February 24, 2016, the case was transferred to a different circuit court judge.

[1] Ms. Lacy's complaint also lists an unnamed radiology technician and an individual identified only as "Chelsea" as defendants. The record does not reflect that either of those individuals was ever identified or participated in this case in any way.

Following transfer of the case, Defendants filed a motion for summary judgment. In the motion and supporting documents, Defendants argued that Ms. Lacy had not produced any evidence in support of her claims and that her claims were negated by sworn affidavits of the VUMC medical staff that treated her. Defendants also filed a motion for sanctions seeking reimbursement for attorney's fees and costs incurred in responding to a frivolous complaint. Ms. Lacy filed responses to both motions, and the trial court heard oral arguments.

On September 19, 2016, the trial court entered an order dismissing all of Ms. Lacy's claims. The trial court's order stated:

> All of the causes of action asserted in Plaintiff's complaint are claims for health care liability governed by Tenn. Code Ann. § 29-26-101 et seq. Plaintiff's allegations of wrongdoing all arise out of misconduct of medical providers during the provision of medical care and treatment. Pursuant to Tenn. Code Ann. § 29-26-101 and the Tennessee Supreme Court's decision in *Ellithorpe v. Weismark*, 479 S.W.3d 818 (Tenn. 2015), all of Plaintiff's claims are governed by the Tennessee Health Care Liability Act.
>
> All health care liability claims have been previously dismissed from this action with prejudice by order of the Court dated February 9, 2016, based on Plaintiff's failure to comply with the written notice and certificate of good faith requirements contained in the Tennessee Health Care Liability Act. Therefore, there are no remaining claims in the case.
>
> Based on the ruling of the Court that all claims are subject to dismissal based on the Health Care Liability Act, the other grounds set forth in Defendants' motion for summary judgment are pretermitted. Defendants' motion for sanctions is also rendered moot and is hereby stricken.

Ms. Lacy timely filed a notice of appeal to this Court on September 23, 2016.

ISSUE

Ms. Lacy raises one issue on appeal, which we restate as follows:

1. Whether the trial court erred in holding that the claims set forth in Ms. Lacy's complaint fall within the statutory definition of a "health care liability action" such that they were subject to dismissal based on Ms. Lacy's failure to comply with the THCLA's pre-suit notice and certificate of good faith requirements.

STANDARD OF REVIEW

This case was resolved in the trial court on a motion to dismiss.[2] Filing a motion to dismiss based on Tennessee Rule of Civil Procedure 12.02(6) is an appropriate method of challenging a plaintiff's compliance with the THCLA's pre-suit notice and certificate of good faith requirements. *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 307 (Tenn. 2012). A Rule 12.02(6) motion requires the court to determine whether the pleadings state a claim upon which relief may be granted. Tenn. R. Civ. P. 12.02(6); *Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 237 (Tenn. 2014). Such motions challenge "only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). The resolution of a motion to dismiss is therefore determined by an examination of the pleadings alone. *Id*. When ruling on a motion to dismiss, the court "must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Id*. (quoting *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002)). The court should grant the motion to dismiss "only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id*. On appeal, we review the trial court's ruling on a motion to dismiss de novo with no presumption of correctness. *Phillips*, 442 S.W.3d at 237.

We recognize that Ms. Lacy is representing herself pro se on appeal as she did in the trial court. Parties who elect to represent themselves are entitled to equal treatment by the courts. *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). As such, the courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. *Id*. Nevertheless, the courts must also be mindful of the boundary between fairness to the pro se litigant and unfairness to the pro se litigant's adversary. *Id*. While the courts should give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs, they must not excuse pro se litigants from complying with the substantive and procedural rules that represented parties are expected to observe. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). With those principles in mind, we consider the issue before us on appeal.

DISCUSSION

The trial court dismissed the claims set forth in Ms. Lacy's complaint based on her failure to comply with the THCLA's pre-suit notice and certificate of good faith

[2] Although the trial court's September 19, 2016 order states, "This matter came before the Court . . . on Defendants' motion for summary judgment[,]" it appears that the trial court analyzed only the sufficiency of Ms. Lacy's complaint, not the strength of her evidence, in dismissing her claims. Furthermore, the parties agree on appeal that this Court should utilize the standard of review applicable to a motion to dismiss.

requirements. Ms. Lacy acknowledges her failure to comply with those procedural requirements but argues that the trial court erred in dismissing her complaint because the THCLA does not apply to her claims. The THCLA applies to all claims that fall within its statutory definition of a "health care liability action," regardless of any other claims, causes of action, or theories of liability alleged in the complaint. Tenn. Code Ann. § 29-26-101. Thus, the only issue before us in this appeal is whether the claims set forth in Ms. Lacy's complaint fall within the THCLA's definition of a health care liability action. A brief history of the THCLA and its judicial interpretations will be beneficial to explaining our resolution of that issue.

In 1975, the General Assembly passed the precursor to the THCLA–the Tennessee Medical Malpractice Act (the "TMMA").[3] *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 520 (Tenn. 2005) (Holder, J., dissenting). The TMMA was a comprehensive legislative package intended to confront a perceived "medical malpractice insurance crisis" in this country. *Cronin v. Howe*, 906 S.W.2d 910, 913 (Tenn. 1995). Due to an alleged increase in medical malpractice claims, insurance companies were increasingly reluctant to write medical malpractice insurance policies, and premiums rose significantly for policies that were available. *Harrison v. Schrader*, 569 S.W.2d 822, 826 (Tenn. 1978). Moreover, there was a belief that "safe estimates required by actuarial uncertainty, aggravated by the extended period during which a physician could be subject to potential liability, contributed to the increase in malpractice insurance costs[.]" *Id*. In an effort to provide certainty regarding the period in which physicians were subject to liability, the TMMA imposed a three-year statute of repose on the time within which a medical malpractice action could be filed. *Cronin*, 906 S.W.2d at 913 (citing *Harrison*, 569 S.W.2d at 826).

In 2008 and 2009, the General Assembly amended the TMMA by passing legislation that established new procedural requirements for plaintiffs seeking to file medical malpractice actions. *See* Act of June 4, 2009, ch. 425, 2009 Tenn. Pub. Acts 472 (2009 amendments); Act of April 24, 2008, ch. 919, 2008 Tenn. Pub. Acts 434 (2008 amendments); *see generally* John A. Day, *Med Mal Makeover: 2009 Act Improves on '08*, 45 Tenn. B.J. 14 (2009). As amended in 2009, the TMMA required plaintiffs initiating a medical malpractice action to give written pre-suit notice to medical service providers named as defendants in the action at least 60 days before the filing of their complaint. Tenn. Code Ann. § 29-26-121(a)(1) (Supp. 2009). The pre-suit notice requirement served to equip defendants with the means to evaluate the substantive merits of a plaintiff's claim. *Stevens ex. rel. Stevens v. Hickman Cnty. Health Care Servs., Inc.*, 418 S.W.3d 547, 555 (Tenn. 2013). Additionally, the amended TMMA required

[3] In 2011, the General Assembly amended the TMMA to replace the term "medical malpractice" with the term "health care liability." Tennessee Civil Justice Act of 2011, ch. 510 § 9, 2011 Tenn. Pub Acts 1505. Because the term "medical malpractice" was used in statutes and judicial opinions prior to 2011, we continue to use it in this opinion as appropriate.

plaintiffs to file a certificate of good faith when initiating a medical malpractice action in which expert testimony would be required. *Id.* § 29-26-122(a). The certificate of good faith requirement served to confirm that the plaintiff had consulted at least one expert who provided a signed written statement of their belief that there was a good faith basis for the action. *Id*.

Of course, "[c]ases involving health or medical entities do not automatically fall within the medical malpractice statute." *Draper v. Westerfield*, 181 S.W.3d 283, 290-91 (Tenn. 2005). Thus, the task of determining whether specific claims were subject to the TMMA fell to the courts. *See, e.g.*, *Estate of Doe v. Vanderbilt Univ., Inc.*, 958 S.W.2d 117, 123 (Tenn. 1997) (holding that the TMMA did not govern the plaintiffs' lawsuit against the defendant for failing to inform its patients that blood they received was not tested for HIV). Historically, such cases usually involved distinguishing ordinary negligence claims from medical malpractice claims. *See, e.g.*, *Pullins v. Fentress Cnty. Gen. Hosp.*, 594 S.W.2d 663, 669 (Tenn. 1979) (holding that a hospital's alleged failure to keep its premises free from spiders should be judged by ordinary negligence standards). The distinction was important because medical malpractice claims required expert testimony to establish the applicable standard of care, while ordinary negligence claims did not. *See, e.g.*, *Peete v. Shelby Cnty. Health Care Corp.*, 938 S.W.2d 693, 696 (Tenn. 1996) (holding that expert proof was not required because a claim that the plaintiff was injured when an orthopedic suspension bar above her hospital bed fell on her sounded in ordinary negligence and not medical malpractice). It was also significant in determining the statutory filing period applicable to the plaintiff's claims. *See, e.g.*, *Gunter v. Lab. Corp. of Am.*, 121 S.W.3d 636, 639 (Tenn. 2003) ("To determine which limitations statute controls Gunter's claim against the laboratory, we must first decide whether the claim sounds in medical malpractice or negligence.").

Despite the importance of determining whether specific claims were properly classified sounding in medical malpractice, the TMMA did not provide a statutory definition for the terms "malpractice" or "medical malpractice" from 1985 to 2011.[4] As a result, even after the 2008 and 2009 amendments introduced new requirements into medical malpractice litigation, litigants continued to dispute whether certain claims were

[4] In 1976, the General Assembly amended the Medical Malpractice Review Board and Claims Act of 1975 to include a definition of "medical malpractice action." *See* 1976 Pub. Acts Ch. 759. From 1976 until 1985, the statute provided:

> "Medical malpractice action" means an action for damages for personal injury or death as a result of any medical malpractice by a health care provider, whether based on tort or contract law. The term shall not include any action for damages as a result of negligence of a health care provider when medical care by such provider is not involved in such action.

Tenn. Code Ann. 29-26-102(6) (1980). In 1985, however, the General Assembly repealed that section. *See* 1985 Pub. Acts Ch. 184, § 4(c).

properly classified as ordinary negligence or medical malpractice. *See, e.g.*, *Long v. Hillcrest Healthcare-West*, No. E2009-01405-COA-R3-CV, 2010 WL 1526065, at *3 (Tenn. Ct. App. Apr. 16, 2010) (determining that the plaintiff's claims sounded in medical malpractice and affirming their dismissal based on the plaintiff's failure to comply with the TMMA's pre-suit notice requirement).

The line of Tennessee cases distinguishing between ordinary negligence and medical malpractice claims culminated with the Tennessee Supreme Court's opinion in *Estate of French v. Stratford*, 333 S.W.3d 546 (Tenn. 2011), which provided a detailed analysis of the interaction between ordinary negligence principles and the TMMA. In *Estate of French*, the administrator of a deceased nursing home resident's estate filed a wrongful death lawsuit against the nursing home asserting negligence claims and violations of the Tennessee Adult Protection Act ("TAPA"). *Estate of French*, 333 S.W.3d at 549. Specifically, the administrator alleged that the nursing home was negligent in assessing the decedent's condition and developing her plan of care and that its certified nursing assistants failed to administer basic care in compliance with the plan. *Id*. at 558. In its response, the nursing home argued that all of the administrator's claims sounded in medical malpractice and that the TMMA therefore provided the sole avenue of recovery. *Id*. at 551; *see* Tenn. Code Ann. § 71-6-120(g) (precluding recovery under the TAPA when the claim is exclusively one for medical malpractice). The trial court agreed and dismissed the administrator's TAPA claims, concluding that the "gravamen of this action sounds in medical malpractice." *Estate of French*, 333 S.W.3d at 552-53. The Court of Appeals affirmed, and the Tennessee Supreme Court granted an appeal to address whether the administrator's claims were "based upon ordinary common law negligence, medical malpractice, or both." *Id*. at 553-54.

In analyzing the claims before it in *Estate of French*, the Tennessee Supreme Court explained that "[b]ecause medical malpractice is a category of negligence, the distinction between medical malpractice and negligence claims is subtle; there is no rigid analytical line separating the two causes of action." *Id*. at 555. The Court therefore reasoned that, "whether claims should be characterized as ordinary negligence or medical malpractice claims obviously depends heavily on the facts of each individual case." *Id*. at 556. While a single complaint may assert both ordinary negligence and medical malpractice claims, however, the TMMA "applies only to those alleged acts that bear a substantial relationship to the rendition of medical treatment by a medical professional, or concern medical art or science, training, or expertise." *Id*. at 557. Applying that substantial relationship test, the Supreme Court concluded claims related to the nursing home's assessment of the decedent's condition and its development of a plan of care sounded in medical malpractice because they fell under the guise of a medical diagnosis requiring specialized skills and training. *Id*. at 558. Accordingly, the Court held that those claims had to be pursued under the TMMA. *Id*. at 560. The Court also concluded, however, claims related to the administration of basic care by certified nursing assistants sounded in ordinary negligence because no specialized medical skill was required to

perform those tasks. *Id*. at 558. Accordingly, the Court held that those claims could be pursued under the TAPA. *Id*. at 565.

Although the Tennessee Supreme Court's opinion in *Estate of French* provided some guidance in discerning what claims were governed by the TMMA, the difficulty of applying the substantial relationship test in a consistent manner was apparent. In fact, Justice Koch wrote a dissenting opinion in *Estate of French* expressing his opinion that the acts and omissions of the certified nursing assistants, as set forth in the complaint, were substantially related to the rendition of medical treatment by a medical professional. *Id*. at 571 (Koch, J., dissenting). Justice Koch asserted that lay persons, using only their common knowledge, would not be able to determine whether the certified nursing assistants' failure to provide basic care caused the decedent's death. *Id*. In closing, he warned that plaintiffs in future cases would rely on the majority's opinion to insist that they must be permitted to present similar claims to a jury without expert proof. *Id*. at 572.

Apparently recognizing the uncertain applicability of its 2008 and 2009 amendments to the TMMA, the General Assembly further amended the TMMA by passing the Tennessee Civil Justice Act of 2011 just four months after the Tennessee Supreme Court's opinion in *Estate of French*. *See* Tennessee Civil Justice Act of 2011, ch. 510, 2011 Tenn. Pub. Acts 1505 (codified at Tenn. Code Ann. § 29-26-101 et seq. (2012)). The Tennessee Civil Justice Act of 2011 amended the TMMA by removing all references to "medical malpractice" from the Tennessee Code and replacing them with "health care liability" or "health care liability action" as applicable. *Id*. Thus, the TMMA became the THCLA, the name by which it is known today. More importantly, however, Tennessee Civil Justice Act of 2011 clarified what claims were governed by the THCLA by adding a definition for the term "health care liability action" to the statutory scheme. *See* Tenn. Code Ann. § 29-26-101.

Since the enactment of the Tennessee Civil Justice Act of 2011, the THCLA has defined a "health care liability action" as:

> [A]ny civil action, including claims against the state or a political subdivision thereof, alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person, regardless of the theory of liability on which the action is based[.]

Tenn. Code Ann. § 29-26-101(a)(1). The statute further provides that "health care provider" includes the employees of a health care provider, such as physicians, nurses, orderlies, and technicians. *Id*. § 29-26-101(a)(2). It also states that "health care services" includes "staffing, custodial or basic care, positioning, hydration and similar patient services." *Id*. § 29-26-101(b). Any claim that falls within the statutory definition of

"health care liability action" is governed by the THCLA regardless of any other claims, causes of action, or theories of liability alleged in the complaint. *Id*. § 29-26-101(c).

In *Ellithorpe v. Weismark*, 479 S.W.3d 818 (Tenn. 2015), the Tennessee Supreme Court clarified what effect the new statutory definition of "health care liability action" would have on prior case law. In *Ellithorpe*, the plaintiffs filed a lawsuit against a licensed clinical social worker for negligence and intentional infliction of emotional distress. 479 S.W.3d at 820. They alleged that the social worker provided counseling services to their minor child without their consent. *Id*. According to their complaint, the plaintiffs' child had been in the temporary custody of her great aunt and uncle pursuant to a juvenile court order that gave plaintiffs the right to be kept informed of, and participate in, the child's counseling. *Id*. at 821. The complaint alleged that the social worker refused to provide the plaintiffs with the child's counseling records and that both the plaintiffs and the child suffered emotional harm as a result of the "secret" counseling. *Id*. at 822. Relying on the statutory definition of a health care liability action, the social worker filed a motion to dismiss based on the plaintiffs' failure to comply with the THCLA's procedural requirements. *Id*. Relying on *Estate of French*, the plaintiffs argued that their claims sounded in ordinary negligence and were therefore not governed by the THCLA. *Id*. The trial court sided with the social worker and dismissed the plaintiffs' complaint, holding that their claims fit under the THCLA's "very broad" definition of a health care liability action. *Id*. at 823. The Court of Appeals reversed the trial court, concluding that the trial court erroneously "relied on the gravamen of the complaint standard rejected in *Estate of French*." *Id*. The Tennessee Supreme Court then granted an appeal to address "whether the trial court erred by failing to apply this Court's analysis in *Estate of French*[.]" *Id*. at 820. The Supreme Court held "that the 'nuanced' approach for distinguishing ordinary negligence and health care liability claims as outlined in *Estate of French* has been statutorily abrogated" by the Tennessee Civil Justice Act of 2011. *Id*. at 827. It explained that the THCLA "establishes a clear legislative intent that *all* civil actions alleging that a covered health care provider . . . caused an injury related to the provision of or failure to provide health care services" must be initiated in compliance with its procedural requirements "regardless of any other claims, causes of action, or theories of liability alleged in the complaint." *Id*. The Supreme Court concluded that the social worker was a health care provider and that the injuries she allegedly caused were related to the provision of health care services. *Id*. at 827-28. Accordingly, it held that the THCLA applied to the plaintiffs' claims and the trial court's dismissal of their complaint was appropriate. *Id*. at 828.

Defendants rely on the Tennessee Supreme Court's opinion in *Ellithorpe* to support their position that all of the allegations in Ms. Lacy's complaint are subject to the THCLA. Citing the broad application of the THCLA in *Ellithorpe*, they argue that Ms. Lacy's "beating" claims are related to the provision of health care services because the alleged beatings occurred while Ms. Lacy was a patient seeking medical treatment at VUMC. They also submit that Ms. Lacy's allegations of misdiagnosis are clearly related

to the provision of health care services. Accordingly, they contend that all of Ms. Lacy's claims are governed by the THCLA and the trial court's dismissal of her complaint was appropriate.

We do not share Defendants' broad interpretation of *Ellithorpe*. Although *Ellithorpe* clarified that making nuanced distinctions between ordinary negligence and health care liability claims is no longer necessary in determining the THCLA's applicability, it did not suggest that the THCLA should govern all claims that arise in a medical setting. Indeed, since the Tennessee Supreme Court released its opinion in *Ellithorpe* in October 2015, this Court has been called on numerous times to determine whether the THCLA governed claims that arose in a medical setting. For example, in *Estate of Thibodeau v. St. Thomas Hospital*, No. M2014-02030-COA-R3-CV, 2015 WL 6561223, at *7 (Tenn. Ct. App. Oct. 29, 2015), this Court held that a claim involving hospital workers' alleged failure to support a patient properly as they transferred her from a stretcher to her automobile was related to the provision of health care services and therefore governed by the THCLA. Similarly, in *Osunde v. Delta Medical Center*, 505 S.W.3d 875, 887-88 (Tenn. Ct. App. 2016), this Court determined that a claim involving a radiology technician's alleged negligence in instructing a patient to stand on a wobbly stool for an x-ray was also related to the provision of health care services such that the THCLA applied. In *Cordell v. Cleveland Tennessee Hospital, LLC*, No. M2016-01466-COA-R3-CV, 2017 WL 830434, at *6 (Tenn. Ct. App. Feb. 27, 2017), however, this Court held that a claim involving the alleged rape of a hospital patient in her hospital bed by hospital employees was not related to the provision of health care and therefore not governed by the THCLA.

In its natural and ordinary usage, the phrase "related to" simply means connected to in some way. *See* Black's Law Dictionary 1479 (10th ed. 2014) (defining "related" as "[c]onnected in some way"); *see also* Webster's New Collegiate Dictionary 994 (9th ed. 1989) (defining "related" as "connected by reason of an established or discoverable relation"). In that sense, any injury caused by a health care provider in a medical setting can be fairly described as related to the provision of health care services. For example, an injury caused by a doctor running over a person in a hospital parking lot as he or she leaves work would be related to the provision of health care services "in some way" because the doctor's very presence at the hospital was for the purpose of providing health care services. Using such a broad interpretation of the phrase "related to," the THCLA would apply to the injured person's claims against the doctor even if the person had no business at the hospital and was merely passing through its parking lot. No reasonable person would suggest that the legislature intended the THCLA to impose additional requirements on the plaintiff in such a case. Such a broad interpretation of the statute would be absurd, and "[c]ourts must presume that the Legislature did not intend an absurdity[.]" *See Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997). In any event, this Court rejected such a broad interpretation of "related to" in *Cordell* when it held that the

alleged rape of a hospital patient in her hospital bed by hospital employees was not related to the provision of health care services. *See Cordell*, 2017 WL 830434, at *6.

Clearly, the legislature did not intend that the phrase "related to" be carried to its logical extreme and apply to every claim that arises in a medical setting. Nevertheless, we have recognized that "[g]iven the breadth of the statute, it should not be surprising if most claims now arising within a medical setting constitute health care liability actions." *Osunde*, 505 S.W.3d at 884-85. However, while the precise location of the analytical line that separates THCLA claims from non-THCLA claims is sometimes unclear, our task is only to determine on which side of the line Ms. Lacy's claims fall.

Ms. Lacy's complaint sets forth claims based on multiple alleged wrongful acts of Defendants. Although past cases suggest that a complaint should be distilled down to a single "gravamen," even when multiple causes of action are alleged in a single complaint, more recent cases recognize that such an analysis is no longer appropriate because the Tennessee Rules of Civil Procedure now permit parties to assert alternative claims and request alternative relief in a single complaint. *Benz-Elliot v. Barrett Enters., LP*, 456 S.W.3d 140, 148 (Tenn. 2015). When a complaint sets forth claims based on more than one distinct wrongful act, we therefore ascertain the gravamen of each claim, rather than the gravamen of the complaint in its entirety, to determine whether each separate claim is subject to the THCLA.

This Court analyzed the THCLA's applicability to a complaint similar to the one at issue here in *Lacy v. Mitchell*, No. M2016-00677-COA-R3-CV, 2016 WL 6996366 (Tenn. Ct. App. Nov. 30, 2016), *perm. app. denied* (Tenn. Feb. 24, 2017).[5] In that case, the plaintiff filed a lawsuit against her chiropractor to recover for injuries she allegedly sustained during a chiropractic appointment. *Id*. at *1. The complaint alleged that the plaintiff was injured when the chiropractor (1) jumped on her back while she was lying on his chiropractic table and (2) struck her in the back with a medical folder as he walked out the door. *Id*. The trial court dismissed the complaint based on the plaintiff's failure to comply with the THCLA's procedural requirements. *Id*. On appeal, this Court construed the complaint as alleging injuries caused by two separate, wrongful acts and analyzed each as a separate claim. *Id*. at *3. We observed that, by the complaint's own wording, the first claim arose from an injury that the plaintiff allegedly suffered while lying on a chiropractic table, during a chiropractic appointment, when a chiropractor applied force to her back by jumping on it. *Id*. With regard to that claim, we concluded, "such an injury would undeniably be related to the provision of chiropractic health care services." *Id*. We therefore held that the claim was governed by the THCLA and affirmed its dismissal. *Id*. With regard to the second claim, however, we observed that the complaint alleged that the plaintiff was injured when, after the chiropractor finished treating the plaintiff, he struck the plaintiff in the back with a medical folder as he walked

[5] Ms. Lacy was also the plaintiff in *Lacy v. Mitchell*.

out the door. *Id*. at *4. Construing the complaint liberally, presuming its allegations to be true, and allowing the plaintiff the benefit of all reasonable inferences, we concluded that it was not clear whether that claim was related to the provision of chiropractic services. *Id*. We therefore vacated the trial court's dismissal of that claim. *Id*.

Ms. Lacy's complaint in this case is not artfully drafted. It is handwritten and contains little punctuation. Nevertheless, we construe it as setting forth claims arising from several distinct acts. The claims can be properly divided into two categories: those involving allegations that Ms. Lacy was beaten and those involving allegations that Ms. Lacy was misdiagnosed. As we did in *Lacy v. Mitchell*, we address each set of claims separately to determine the THCLA's applicability.

As it relates to the "beating" allegations, Ms. Lacy's complaint alleges that various members of VUMC's medical staff, including Dr. Emerson and Ms. Bowman, beat Ms. Lacy while she was in the hallway, while she was lying in a hospital bed, and as she stood to get out of her wheelchair following a CT scan. Defendants argue that those allegations are related to the provision of health care services because, similar to the first claim in *Lacy v. Mitchell*, Ms. Lacy was lying in a hospital bed when the alleged beatings took place in this case. This argument fails, however, because it ignores the other alleged beatings that took place while Ms. Lacy was in the hallway and as she stood to get out of her wheelchair. Moreover, the plaintiff's position on a chiropractic table or in a hospital bed at the time of his or her injury is not, standing alone, determinative of whether the act that caused the injury was related to the provision of health care services. It is merely a fact that may or may not be relevant in making that determination. Given the nature of the treatment that the plaintiff in *Lacy v. Mitchell* was receiving at the time of the alleged wrongful acts in that case, the plaintiff's position on the chiropractic table was relevant to whether her claims were related to the provision of health care services. In this case, the complaint alleges that members of VUMC's medical staff beat Ms. Lacy while she was a patient in the VUMC emergency department for a CT scan. Accepting those allegations as true and allowing Ms. Lacy the benefit of all reasonable inferences, we cannot conclude that those allegations are related to the provision of the health care services she was there to receive. While further evidence may demonstrate otherwise, it is not clear that the THCLA applies to those claims at this stage of the proceedings. We therefore reverse the trial court's dismissal of Ms. Lacy's "beating" claims.

As it relates to the misdiagnosis allegation, Ms. Lacy's complaint alleges, "by the Radiology [technician] not giving Plaintiff Lacy the correct diagnosis[,] Plaintiff Lacy went home and gave her son the wrong medication . . . causing him to seek Medical Care[.]" While the precise nature of that allegation is unclear, we are satisfied that any claim involving an alleged misdiagnosis is related to the provision of health care services such that it is governed by the THCLA. We therefore affirm the trial court's dismissal of that claim based on Ms. Lacy's failure to comply with the THCLA's procedural requirements.

CONCLUSION

In sum, we conclude that Ms. Lacy's complaint contains two separate claims. First, it alleges that members of VUMC's medical staff beat Ms. Lacy while she was a patient in its emergency department. Presuming all factual allegations to be true and giving Ms. Lacy the benefit of all reasonable inferences, it is not apparent from the face of the complaint that those "beating" claims fall within the statutory definition of a health care liability action such that they are governed by the THCLA. We therefore reverse the trial court's dismissal of those "beating" claims. Second, Ms. Lacy's complaint alleges that a member of VUMC's medical staff misdiagnosed Ms. Lacy. That claim clearly falls within the statutory definition of a health care liability action and is therefore governed by the THCLA. We therefore affirm the trial court's dismissal of that misdiagnosis claim. We remand this case to the trial court for further proceedings as may be necessary and are consistent with this opinion. Costs of this appeal are assessed one-half against the appellant, Deborah Lacy, and one-half against the appellees, Vanderbilt University Medical Center, Bethany Bowman, and Geremiha Emerson, M.D., for which execution may issue if necessary.

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ARNOLD B. GOLDIN, JUDGE