Rel: September 10, 2021

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

1200200

Ex parte Mobile Infirmary Association d/b/a J.L. Bedsole Rotary Rehabilitation Hospital and d/b/a Mobile Infirmary Medical Center

PETITION FOR WRIT OF MANDAMUS

(In re: John R. McBride

v.

J.L. Bedsole/Rotary Rehabilitation Hospital and Mobile Infirmary Association)

(Mobile Circuit Court, CV-20-901561)

BRYAN, Justice.

Mobile Infirmary Association ("MIA"), doing business as J.L. Bedsole Rotary Rehabilitation Hospital ("Rotary Rehab") and doing business as

Mobile Infirmary Medical Center ("Mobile Infirmary"), petitions this Court for a writ of mandamus directing the Mobile Circuit Court to dismiss a complaint filed by John R. McBride alleging medical malpractice. For the reasons explained below, we grant the petition and issue the writ.

Background

On July 22, 2020, McBride filed a complaint in the circuit court, listing as defendants "J.L. Bedsole/Rotary Rehabilitation Hospital," "Mobile Infirmary Association," and fictitiously named defendants. According to McBride's complaint, he had undergone a craniotomy, hospitalization, and treatment at Mobile Infirmary for a subdural hematoma he had suffered while at home. He alleged that, in early June 2018, he was transferred to Rotary Rehab "to receive skilled and specialized nursing, medical and rehabilitative therapy." McBride further alleged that, while he was a patient at Rotary Rehab, he "suffered a decubitus pressure ulcer to his left and right heels, causing severe pain and suffering, infection, hospital treatment, financial loss, emotional distress, and eventually amputation below his left knee." McBride's

complaint asserted counts of negligence and wantonness against the defendants, based on several alleged breaches of the applicable standards of care.

MIA, in its capacity doing business as Rotary Rehab and in its capacity doing business as Mobile Infirmary, filed a motion to dismiss McBride's complaint,[1] arguing that his claims are barred by the limitations period set out in § 6-5-482(a), Ala. Code 1975, which provides, in relevant part: "All actions against physicians, surgeons, dentists, medical institutions, or other health care providers for liability, error, mistake, or failure to cure, whether based on contract or tort, must be commenced within two years next after the act, or omission, or failure giving rise to the claim ...." (Emphasis added.) MIA asserted:

> "2. Here, [McBride]'s Complaint ... alleges that he was dismissed from Mobile Infirmary on June 2, 2018[,] and was dismissed from ... Rotary Rehab on June 20, 2018. Accordingly, the last date any claims against Mobile Infirmary could have accrued was on June 2, 2018. The last date any

[1]Mobile Infirmary was not specifically named as a separate defendant in McBride's complaint. MIA asserts that it filed the motion to dismiss in its capacity doing business as Mobile Infirmary "as a matter of caution." MIA's petition at 6 n.1.

> claims against ... Rotary Rehab could have accrued was on June 20, 2018.
>
> "3. [McBride]'s Complaint was not filed until July 22, 2020, more than two years after the date of accrual of any potential claims against Mobile Infirmary or ... Rotary Rehab. Accordingly, these claims are barred pursuant to Alabama Code [1975,] § 6-5-482."

McBride filed a response and a supplemental response to the motion to dismiss. In summary, McBride argued that the legal injury forming the basis of his claims was the below-the-knee amputation of his left leg, which he contends occurred on July 23, 2018. Because he commenced this action within two years of the occurrence of that injury, McBride argued, his claims are not barred by § 6-5-482(a). MIA filed a reply to McBride's responses, arguing that, as opposed to the amputation of his lower left leg, McBride's actual legal injuries were the pressure ulcers referenced in his complaint, which were present before July 22, 2018. Thus, MIA argued, McBride's claims accrued more than two years before he commenced this action on July 22, 2020, and are, therefore, barred by § 6-5-482(a).

After a hearing,[2] the circuit court entered an order denying MIA's motion to dismiss on November 20, 2020. MIA timely filed this petition for a writ of mandamus on December 29, 2020. See Rule 21, Ala. R. App. P.

Standard of Review

> " 'A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: " ' (1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.' " Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).'

"Ex parte Watters, 212 So. 3d 174, 180 (Ala. 2016).

> " 'The general rule is that, subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus.' Ex parte Brown, [Ms. 1190962, Jan. 22, 2021] ____ So. 3d____, ____ (Ala. 2021). However,

[2]In his answer to MIA's mandamus petition, McBride asserts that the circuit court considered oral arguments from the parties before ruling on the motion to dismiss. McBride's answer at 2 and 7.

> " '[t]his Court has recognized that an appeal is an inadequate remedy in cases where it has determined that a defendant should not have been subjected to the inconvenience of litigation because it was clear from the face of the complaint that the defendant was entitled to a dismissal or to a judgment in its favor.'

"Ex parte Sanderson, 263 So. 3d 681, 687-88 (Ala. 2018) (citing Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), and Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060 (Ala. 2014)). In particular, in Ex parte Hodge, this Court permitted mandamus review of a trial court's denial of a motion to dismiss contending that the plaintiff's malpractice claim was barred by the four-year statute of repose contained in § 6-5-482(a), Ala. Code 1975, when the applicability of that statute was clear from the face of the complaint. Cf. Ex parte Watters, 212 So. 3d at 182 (denying a mandamus petition because 'it [was] not abundantly clear from the face of [the plaintiff's] complaint whether the survival statute dictate[d] dismissal of the legal-malpractice claim because the issue whether the claim sound[ed] in tort, in contract, or in both for that matter, [was] sharply disputed by the parties').

"With respect to evaluating a trial court's denial of a Rule 12(b)(6)[, Ala. R. Civ. P.,[3]] motion to dismiss,

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[3]MIA's motion to dismiss did not specify under which subsection of Rule 12(b), Ala. R. Civ. P., it contends a dismissal of McBride's complaint is warranted. However, this Court has noted that the plaintiff's failure to state a claim can be properly raised in a Rule 12(b)(6) motion to dismiss when it is apparent from the face of the complaint that the plaintiff's claims are barred by a statute of limitations. See Sims v. Lewis, 374 So. 2d 298, 302 (Ala. 1979)("We hold that while the defenses of laches or

> " '[t]he appropriate standard of review ... is whether "when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to relief." Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993); Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985). This Court does not consider whether the plaintiff will ultimately prevail, but only whether the plaintiff may possibly prevail. Nance, 622 So. 2d at 299. A "dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." Nance, 622 So. 2d at 299; Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986).'
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> "Lyons v. River Rd. Constr., Inc., 858 So. 2d 257, 260 (Ala. 2003)."

Ex parte Abbott Lab'ys, [Ms. 1191001, May 28, 2021] ____ So. 3d ____, ____ (Ala. 2021).

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limitations should be presented in a pleading to a preceding pleading, both may be properly raised via the [Rule] 12(b)(6) motion where the face of the complaint shows that the claim is barred."). Consistent with the foregoing, McBride also views MIA's motion to dismiss as a Rule 12(b)(6) motion. McBride's answer at 5-6. Therefore, the standard of review used for Rule 12(b)(6) motions is applicable in this case.

Analysis

MIA argues that it is clear from the face of McBride's complaint that his cause of action accrued more than two years before he filed his complaint on July 22, 2020, and, consequently, is barred under the two-year limitations period imposed by § 6-5-482(a). MIA cites, among other cases, this Court's decision in Mobile Infirmary v. Delchamps, 642 So. 2d 954 (Ala. 1994). In Delchamps, the Court stated the following general propositions concerning the operation of the limitations period set out in § 6-5-482:

> "The limitations period of § 6-5-482 commences with the accrual of a cause of action. Street v. City of Anniston, 381 So. 2d 26 (Ala. 1980); Bowlin Horn v. Citizens Hosp., 425 So. 2d 1065 (Ala. 1983); Ramey v. Guyton, 394 So. 2d 2 (Ala. 1981). A cause of action 'accrues' under § 6-5-482 when the act complained of results in legal injury to the plaintiff. Grabert v. Lightfoot, 571 So. 2d 293, 294 (Ala. 1990); Colburn v. Wilson, 570 So. 2d 652, 654 (Ala. 1990). The statutory limitations period begins to run whether or not the full amount of damages is apparent at the time of the first legal injury. Garrett v. Raytheon Co., 368 So. 2d 516, 518 (Ala. 1979). When the wrongful act or omission and the resulting legal injury do not occur simultaneously, the cause of action accrues and the limitations period of § 6-5-482 commences when the legal injury occurs. Moon v. Harco Drugs, Inc., 435 So. 2d 218,

> 219 (Ala. 1983); Ramey v. Guyton, 394 So. 2d 2, 4-5 (Ala. 1981)."

Delchamps, 642 So. 2d at 958 (emphasis added).

McBride's complaint lists the following injuries he allegedly suffered "[a]s a direct and proximate result of [the defendants'] negligent [and wanton] acts and omissions":

"a. A pressure ulcer to his left heel,

"b. Severe pain and suffering,

"c. Infection,

"d. Wound deterioration,

"e. Loss of dignity, and

"f. Amputation of his left leg below the knee."

According to McBride's complaint, he was discharged from Rotary Rehab "[o]n June 20, 2018, ... with pressure ulcers present on both his left and right heels. [McBride]'s left heel pressure ulcer was recorded as unstageable with dark gray eschar and erythema and edema surrounding the wound." His allegation is that, but for the negligent and wanton failure by the defendants to provide him with adequate care while he was

a patient, he would not have suffered the injuries referenced in his complaint.

Thus, based on the allegations set out in McBride's July 22, 2020, complaint, it is clear that he commenced this action more than two years after the alleged negligence and wantonness that caused the "pressure ulcers ... on both his left and right heels" and "the dark gray eschar and erythema and edema surrounding the" left-heel pressure ulcer. See Delchamps, 642 So. 2d at 958. Notwithstanding the inclusion of those injuries in his complaint, McBride does not appear to dispute in his answer to MIA's mandamus petition that any claims predicated on those injuries are barred by the limitations period set out in § 6-5-482(a).

However, McBride argues that his cause of action did not actually accrue until his lower left leg was amputated. Specifically, he states:

> "McBride's injury developed on July 23, 2018, with his lower leg amputation .... The Complaint accurately identifies McBride's amputation as his injury, but describes the other factors of his medical condition in pleading the matter with specificity, as required by the Alabama Medical Malpractice Act. ... To affix McBride's statute of limitations to a medical condition that preceded his actual injury would be considered unfair to any plaintiff."

McBride's answer at 8-9 (emphasis added).

Thus, McBride appears to argue that the Court should view the amputation of his lower left leg as a separate or different injury from the "pressure ulcers ... on both his left and right heels" and "the dark gray eschar and erythema and edema surrounding the" left-heel pressure ulcer that were present when he was discharged from Rotary Rehab on June 20, 2018. In other words, it appears that McBride believes that the amputation of his lower left leg constituted a separate and new cause of action altogether. Put yet another way, McBride suggests that this case is like McWilliams v. Union Pacific Resources Co., 569 So. 2d 702, 704 (Ala. 1990), "wherein the damage complained of occurred at a date later than the actions of the defendants." See also Ramey v. Guyton, 394 So. 2d 2 (Ala. 1980)(holding that a plaintiff's cause of action did not accrue for the purposes of the two-year limitations period in § 6-5-482(a) until she suffered a stroke possibly caused by certain medication, notwithstanding the fact that the stroke occurred almost one year after the defendant had written the plaintiff's last prescription for the medication). He also appears to suggest that the actual cause of his need for the lower-left-leg

amputation is currently unknown but can be determined after discovery. McBride's answer at 7.

We emphasize that, at this stage of the proceedings, the applicable standard of review required the circuit court and requires this Court to view McBride's allegations most strongly in his favor and to consider only whether he might possibly prevail if he can prove his allegations. See Ex parte Abbott Lab'ys, ____ So. 3d at ____. The issue before us is not one of proof; rather, the issue is whether the action can be maintained if McBride's allegations are true. See id.

However, our obligation to assume the truth of McBride's allegations likewise compels us to confront the reality that McBride's argument essentially amounts to an invitation for pure speculation by this Court. Specifically, to surmise, as McBride appears to suggest in his answer, that the eventual need for the amputation of McBride's lower left leg could have been an altogether new injury, totally unrelated to the injuries already present on June 20, 2018, would be a supposition that is not only absent from, but directly contrary to, McBride's actual allegations. Moreover, such speculation would fail to provide an explanation of any

causal relationship between the defendants' alleged negligence and wantonness and the amputation.

We note that McBride's complaint has not alleged that any negligent or wanton acts or omissions by the defendants occurred after he was discharged from Rotary Rehab on June 20, 2018. Therefore, to connect the alleged negligence and wantonness of the defendants in failing to properly treat McBride's pressure ulcers and related conditions to his lower-left- leg amputation, his complaint necessarily alleges that a causal chain exists between those conditions and the amputation. Specifically, as McBride describes it in his complaint, his allegation is that, after his discharge from Rotary Rehab, "[h]is left heel pressure ulcer continued to worsen and develop infections." (Emphasis added.) If the need for the amputation was not a consequence of deteriorating circumstances brought on by the conditions present at the time of his discharge from Rotary Rehab, and therefore the defendants' alleged negligence and wantonness, the complaint is devoid of any allegation that the defendants' alleged negligence and wantonness caused the amputation.

As MIA notes,

> "'"[this Court has] held that the statute begins to run whether or not the full amount of damages is apparent at the time of the first legal injury. In Kelly v. Shropshire, 199 Ala. 602, [604-05,] 75 So. 291, 292 (1917), the rule was stated as follows:
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> > "'"'If the act of which the injury is the natural sequence is of itself a legal injury to plaintiff, a completed wrong, the cause of action accrues and the statute begins to run from the time the act is committed, be the actual damage (then apparent) however slight, and the statute will operate to bar a recovery not only for the present damages but for damages developing subsequently and not actionable at the time of the wrong done; for in such a case the subsequent increase in the damages resulting gives no new cause of action. . . .'"'"

Moon v. Harco Drugs, Inc., 435 So. 2d 218, 220 (Ala. 1983)(quoting Garrett v. Raytheon Co., 368 So. 2d 516, 519 (Ala. 1979), overruled on other grounds, Griffin v. Unocal Corp., 990 So. 2d 291(Ala. 2008))(emphasis added). See also Ex parte Abbott Lab'ys, ____ So. 3d at ____ ("'The statute of limitations begins to run when the cause of action accrues, which this Court has held is the date the first legal injury occurs.' Ex parte Integra LifeSciences Corp., 271 So. 3d 814, 818 (Ala. 2018). 'A cause of action accrues as soon as the claimant is entitled to maintain an action,

regardless of whether the full amount of the damage is apparent at the time of the first legal injury.' Chandiwala v. Pate Constr. Co., 889 So. 2d 540, 543 (Ala. 2004)." (Emphasis added.)).

It is clear from the face of McBride's complaint that his claims depend upon the notion that the amputation of his lower left leg was a "natural sequence" of the alleged negligence and wantonness of the defendants while McBride was a patient at Rotary Rehab. Moon, 435 So. 2d at 220. As McBride phrased it in response to MIA's motion to dismiss, his allegation is that the defendants' "neglect placed [him] on a path toward his injury of surgical amputation."[4]

Because McBride's injuries, "however slight," ultimately "resulting" in the need for the amputation were already present when he was

[4]The dissent contends that, in derogation of the applicable standard of review, we have impermissibly made assumptions regarding what caused the need for the amputation of McBride's lower left leg. We make no such assumptions. Our review is limited only to the allegations contained in McBride's complaint, which assert that the need for his lower-left-leg amputation was caused by the injuries attributable to the allegedly deficient care he received at Rotary Rehab, which McBride asserts ceased on June 20, 2018. As noted above, the applicable standard of review requires that we treat those allegations as true.

discharged from Rotary Rehab on June 20, 2018, it is likewise clear that "the cause of action accrue[d] and the statute beg[an] to run" no later than June 20, 2018. Id. The eventual need for an amputation, or the "subsequent increase" in McBride's injuries, "gives no new cause of action." Id.; see also Grabert v. Lightfoot, 571 So. 2d 293, 294 (Ala. 1990)("Certainly, Grabert was entitled to maintain an action against Dr. Lightfoot immediately after the May 1, 1987, operation, despite the fact that the extent of Grabert's injuries allegedly caused by Dr. Lightfoot's failure to find or to remedy the hernia may not have been fully known then."), and Street v. City of Anniston, 381 So. 2d 26, 31 (Ala. 1980)(noting this Court's precedent holding that, when a legally cognizable injury occurs immediately upon the defendant's negligence, even though "the actual injury initially incurred was so slight that it [i]s not discovered until years later, the cause of action accrue[s], nevertheless, at the time of the act or omission complained of").[5] Therefore, the two-year

[5]In his answer to MIA's mandamus petition, McBride argues that his cause of action did not accrue until the amputation of his lower left leg on July 23, 2018, because, he says, that was the first time he could have recognized that his injuries were proximately caused by the defendants.

limitations period for McBride to commence his action imposed by § 6-5-482(a) expired on June 20, 2020. Because McBride did not file his

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McBride's answer at 10. It appears that McBride is arguing that his cause of action did not accrue until he discovered the alleged negligence or wantonness of the defendants. However, this Court has previously explained that it will not apply a "discovery rule" to a statute of limitations unless one is specifically prescribed by the legislature. See Coilplus-Alabama, Inc. v. Vann, 53 So. 3d 898, 908 (Ala. 2010)(quoting the appendix to Griffin v. Unocal Corp., 990 So. 2d 291, 311 (Ala. 2008)). Section 6-5-482(a) actually represents an instance in which the legislature has provided for such a rule, but the rule applies only in specified circumstances. See Vann, 53 So. 3d at 908. In particular, § 6-5-482(a) provides, in pertinent part:

> "[I]f the cause of action is not discovered and could not reasonably have been discovered within [the two-year limitations] period, then the action may be commenced within six months from the date of such discovery or the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier ...."

(Emphasis added.) As MIA points out on page 12 of its reply brief, the foregoing portion of § 6-5-482(a) has no application in this case because McBride discovered the defendants' alleged negligence and wantonness within the two-year limitations period set out in § 6-5-482(a). See Smith v. Bay Minette Infirmary, 485 So. 2d 716, 717 (Ala. 1986)("It is only when the cause of action is not discovered in time to bring it within two years of the act or omission that the statute allows six months after discovery as an additional period in which the action may be commenced.").

complaint until July 22, 2020, this action was commenced outside the limitations period and is, therefore, barred.

Conclusion

Based on the foregoing, we conclude that MIA has shown that the face of McBride's complaint demonstrates that this action was brought outside the two-year limitations period imposed by § 6-5-482(a). See Ex parte Abbott Lab'ys, supra. Because the statutory bar is apparent from the face of McBride's complaint, MIA has also demonstrated that an appeal from a final judgment of the circuit court would be an inadequate remedy for MIA under the circumstances. See id. Therefore, MIA has demonstrated a clear legal right to an order dismissing McBride's complaint. See id.; see also Tobiassen v. Sawyer, 904 So. 2d 258, 261 (Ala. 2004)(" '[W]hen it appears from the face of the complaint that the plaintiff's claim is time-barred, the defendant is entitled to a dismissal based upon the defense of the statute of limitations, without the necessity of offering any proof.' Payton v. Monsanto Co., 801 So. 2d 829, 834 (Ala. 2001)."). Accordingly, MIA's mandamus petition is granted, and the writ of mandamus is hereby issued directing the circuit court to vacate its

November 20, 2020, order denying MIA's motion to dismiss and to enter an order granting the motion.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Sellers, and Mitchell, JJ., concur.

Mendheim and Stewart, JJ., dissent.

MENDHEIM, Justice (dissenting).

I believe that the main opinion fails to adhere to the standard of review applicable to this petition for the writ of mandamus, and, therefore, I dissent. The main opinion issues the writ and directs the Mobile Circuit Court to grant a motion to dismiss filed by Mobile Infirmary Association, doing business as J.L. Bedsole Rotary Rehabilitation Hospital ("Rotary Rehab") and doing business as Mobile Infirmary Medical Center, based on the applicability of the two-year statute of limitations provided in § 6-5-482(a), Ala. Code 1975, a part of the Alabama Medical Liability Act ("the AMLA"), § 6-5-480 et seq. and § 6-5-540 et seq., Ala. Code 1975. Our standard of review on a motion to dismiss is as follows:

> "The appropriate standard of review of a trial court's denial of a motion to dismiss is whether 'when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to relief.' Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993); Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985). This Court does not consider whether the plaintiff will ultimately prevail, but only whether the plaintiff may possibly prevail. Nance, 622 So. 2d at 299. A 'dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of

> facts in support of the claim that would entitle the plaintiff to relief.' Nance, 622 So. 2d at 299; Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986)."

Lyons v. River Rd. Constr., Inc., 858 So. 2d 257, 260 (Ala. 2003) (emphasis added). Additionally,

> " '[t]he general rule is that, subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus.' Ex parte Brown, [Ms. 1190962, Jan. 22, 2021] ___ So. 3d ___, ___ (Ala. 2021). However,
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> > " '[t]his Court has recognized that an appeal is an inadequate remedy in cases where it has determined that a defendant should not have been subjected to the inconvenience of litigation because it was clear from the face of the complaint that the defendant was entitled to a dismissal or to a judgment in its favor.'
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> "Ex parte Sanderson, 263 So. 3d 681, 687-88 (Ala. 2018) (citing Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), and Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060 (Ala. 2014))."

Ex parte Abbott Lab'ys, [Ms. 1191001, May 28, 2021] ___ So. 3d ___, ___ (Ala. 2021). Thus, in a circumstance such as this one, we must be especially cautious in how we read the plaintiff's complaint.

The pertinent portions of plaintiff John R. McBride's complaint aver:

"1. [McBride] brings the instant action for recovery of damages due to nursing home negligence of Defendants, named and fictitious. On or about June and July of 2018, while a resident of [Rotary Rehab], Plaintiff John R. McBride suffered a decubitus pressure ulcer to his left and right heels, causing severe pain and suffering, infection, hospital treatment, financial loss, emotional distress, and eventually amputation below his left knee. The Defendants' general neglect and failures to provide appropriate care were the direct and proximate cause of [McBride's] injuries.

"....

"16. [McBride] was admitted to [Rotary Rehab] with several diagnoses and medical conditions, including, but not limited to: history of falls, history of circulatory disease, peripheral vascular disease, diabetes, and hypertension.

"17. Specifically, John R. McBride developed medical conditions and injuries that include, but are not limited to, the following:

"a. Pressure ulcer to his left heel,

"b. Pressure ulcer to his right heel,

"c. Unnecessary wound treatment and therapy,

"d. Pain and suffering,

"e. Emotional distress,

"f. Amputation of his left leg below the knee, and

> "g. Loss of dignity, as indicated by John R. McBride's lack of hygiene care, activities of daily living care, and other issues effecting his personal dignity.

"18. On or about June 11, 2018, Defendant Rotary Rehab's nursing staff noted a Stage II pressure ulcer to [McBride's] left heel, measuring 4 cm x 4 cm x 0.1 cm. [Rotary Rehab's] staff also recorded a pressure ulcer to [McBride's] right heel.

"19. On or about June 20, 2018, [McBride] was discharged from Defendant Rotary Rehab, with pressure ulcers present on both his left and right heels. [McBride's] left heel pressure ulcer was recorded as unstageable with dark gray eschar and erythema and edema surrounding the wound. [McBride] was instructed to follow up with outpatient wound treatment from home.

"20. [McBride] began visits for wound treatment to his left heel through June and July of 2018, but his medical providers were unable to heal the subject pressure ulcer. His left heel pressure ulcer continued to worsen and develop infections throughout this period.

"21. On July 23, 2018, [McBride] entered Thomas Hospital upon medical advice to undergo left leg amputation below the knee. Medical records from [McBride's] hospital stay and surgery indicate that [McBride's] history of circulatory problems made it difficult or impossible to heal his left leg pressure ulcer.

"....

> "26. As a direct and proximate result of Defendant Rotary Rehab's negligent acts and omissions, Plaintiff John R. McBride suffered damages including, but not limited to:
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> "a. A pressure ulcer to his left heel,
>
> "b. Severe pain and suffering,
>
> "c. Infection,
>
> "d. Wound deterioration,
>
> "e. Loss of dignity, and
>
> "f. Amputation of his left leg below the knee."

What becomes immediately apparent upon reading those allegations is that, because McBride's left leg was amputated on July 23, 2018, and because he filed his complaint on July 22, 2020, on the face of the complaint McBride commenced his action within two years of his leg-amputation injury. Under our mandamus standard of review, our inquiry clearly could end there. However, the main opinion concludes that we must look beyond the face of that allegation because McBride's complaint also relates that the pressure ulcer on his left heel was noted by Rotary Rehab staff on June 11, 2018, and he was discharged from Rotary Rehab on June 20, 2018, with that pressure ulcer still present, which would

mean that McBride's complaint was filed slightly outside the two-year limitations period with respect to a pressure-ulcer injury. McBride appears to concede that point by arguing that his focus is on his leg-amputation injury, not upon a pressure-ulcer injury. But that concession is not enough for the main opinion to forgo further analysis because, it says, the pressure ulcer in McBride's left leg was the first onset of injury that eventually led to the leg amputation and, therefore, the date of accrual of McBride's entire cause of action must be traced back the date of the left-heel pressure ulcer.

It is certainly possible to read McBride's complaint in a way that justifies the main opinion's conclusion, but, at this stage of the litigation, the facts do not dictate that as the only way for the case to unfold. In paragraph 17 of the complaint, McBride combines "medical conditions and injuries" together in a list. That list includes, among other things, a left-heel pressure ulcer, a right-heel pressure ulcer, and a left-leg amputation. This means that the complaint can be read as stating that the left-heel pressure ulcer was one medical condition McBride had, just as he had a right-heel pressure ulcer, but that the left-leg amputation was his actual

injury.[6] Moreover, it is unclear from paragraphs 16 through 20 of the complaint whether McBride is alleging that the pressure ulcers developed while he was at Rotary Rehab or that he already had the pressure ulcers when he was transferred to Rotary Rehab and Rotary Rehab's culpability arose from the fact that its staff was unable to effectively treat the left-heel pressure ulcer. Either way, on the face of the complaint, the left-heel pressure ulcer can be viewed as a separate medical condition or injury, not as the condition that led to, or caused, the left-leg amputation.

The main opinion implicitly appears to acknowledge the foregoing possibility because it proceeds to contend that if the left-leg amputation is considered to be a separate medical condition or injury from the left-heel pressure ulcer, then there is no causal connection between Rotary

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[6]It is true that, in paragraph 26 of the complaint, McBride lists the left-heel pressure ulcer as one of the problems for which he seeks damages, whereas he did not seek damages for the right-heel pressure ulcer. This could be interpreted to mean that McBride pleaded the left-heel pressure ulcer as an injury while asserting that the right-heel pressure ulcer was just a medical condition. On the other hand, it could also be interpreted to mean that the left-heel pressure ulcer was more severe than the right one and that he therefore included it as a separate injury, just as he did the left-leg amputation.

Rehab's actions and McBride's leg-amputation injury. See ___ So. 3d at ___ (asserting that "such speculation would fail to provide an explanation of any causal relationship between the defendants' alleged negligence and wantonness and the amputation"). However, there are two problems with that argument. First, a lack of any relation between the defendants' actions and the plaintiff's claimed injury goes to a deficiency in the stated claim, not to a deficiency based on the statute of limitations. Here, Mobile Infirmary Association filed a motion to dismiss based on the statute of limitations, not on a failure to state a claim, and we should not issue a writ of mandamus directing the circuit court to grant a motion to dismiss based on a ground not argued by the defendant to the circuit court. Second, the main opinion assumes that there is no set of facts under which McBride could establish a causal connection between Rotary Rehab's care and his left-leg-amputation injury without a link to the left-heel pressure ulcer. But there is no way the main opinion reasonably can make that assumption because it calls for a medical conclusion at the motion-to-dismiss stage of the litigation. As McBride notes in his brief, he also had a right-heel pressure ulcer, but his right leg did not end up needing to be

amputated, so it is at least possible that the left-leg pressure ulcer was not the cause of the left-leg amputation. The fact that McBride's complaint does not definitively explain how Rotary Rehab's care led to his left-leg amputation does not mean there is no set of facts under which Rotary Rehab could be responsible for the leg amputation absent attributing it to the left-heel pressure ulcer. "In several medical-malpractice cases ..., this Court has held that a legal injury does not necessarily occur at the same time as the negligent act or omission causing the injury." Crosslin v. Health Care Auth. of Huntsville, 5 So. 3d 1193, 1197 n.2 (Ala. 2008). It is possible that Rotary Rehab's care of McBride created a need to amputate his left leg that did not manifest until just before the amputation surgery. McBride should be permitted to explore that possibility through discovery given that he has alleged that Rotary Rehab is in the causal chain that resulted in the leg amputation.

In this regard, it should be remembered what the AMLA requires a plaintiff to include in his or her complaint. Section 6-5-551, Ala. Code 1975, states, in part:

> "The plaintiff shall include in the complaint filed in the action a detailed specification and factual description of each act and omission alleged by plaintiff to render the health care provider liable to plaintiff and shall include when feasible and ascertainable the date, time, and place of the act or acts. ... Any complaint which fails to include such detailed specification and factual description of each act and omission shall be subject to dismissal for failure to state a claim upon which relief may be granted."

The complaint is required to contain a detailed specification and a factual description of the health-care provider's acts or omissions; it is not required to contain a detailed explanation of the plaintiff's theory of causation. Indeed, concerning the summary-judgment stage of medical-malpractice litigation, this Court has stated:

> "In a medical-malpractice action, the plaintiff must present expert testimony establishing the appropriate standard of care, the doctor's deviation from that standard, and 'a proximate causal connection between the doctor's act or omission constituting the breach and the injury sustained by the plaintiff.' Bradford v. McGee, 534 So. 2d 1076, 1079 (Ala. 1988). 'To present a jury question, the plaintiff must adduce some evidence indicating that the alleged negligence (the breach of the appropriate standard of care) probably caused the injury. A mere possibility is insufficient. The evidence produced by the plaintiff must have "selective application" to one theory of causation.' 534 So. 2d at 1079."

Rivard v. University of Alabama Health Servs. Found., P.C., 835 So. 2d 987, 988 (Ala. 2002) (emphasis added and omitted). The complaint has to allege the defendant's actions in detail and provide a narrative that generally connects those actions with the plaintiff's injuries. Plaintiffs in medical-malpractice actions often wait until discovery to find a medical expert who will narrow the possibilities "to one theory of causation."[7] The plaintiff's theory and evidence of causation is then tested at the summary-judgment stage.

Despite the fact that McBride met the pleading requirements of § 6-5-551, the main opinion insists that McBride's argument that the left-leg amputation is a separate injury from the left-heel pressure ulcer is

[7]With respect to the requirements of § 6-5-551, it should also be noted that McBride listed details concerning the left-heel pressure ulcer, including dates, in his complaint because he wanted to hold the defendants liable for their acts or omissions concerning that condition. If he had not included those dates even though they were available, McBride was subject to not being able to hold the defendants accountable for the development of that condition. However, if McBride had not been so specific about the left-heel pressure ulcer, the defendants would not have been able to attack McBride's complaint on statute-of-limitations grounds with respect to the leg-amputation injury. McBride should not be presented with such a Hobson's choice.

purely speculative. Again, even if that is true, the lack of evidence for causation is a deficiency properly challenged in a summary-judgment motion, not in a motion to dismiss. The issue before us in this mandamus petition is whether McBride commenced his action within two years of his alleged injury, not whether McBride failed to demonstrate a specific causal link between Rotary Rehab's care and that injury. McBride may ultimately end up having difficulty establishing a causal link between Rotary Rehab's care and his leg-amputation injury, but the standard at this point is not whether McBride "will ultimately prevail, but only whether [McBride] may possibly prevail." Lyons, 858 So. 2d at 260.

In sum, on the face of the complaint, McBride's action seeking damages for his leg-amputation injury is not barred by the applicable statute of limitations. To conclude otherwise, the main opinion explores whether that alleged injury is, in fact, the first injury, and, to determine that, it makes assumptions about the specific cause of the leg-amputation injury. That analysis fails to view the allegations in McBride's complaint most strongly in his favor, and it permits mandamus relief even though it is not " 'clear from the face of the complaint that the defendant was

entitled to a dismissal.'" Ex parte Abbott Lab'ys, ___ So. 3d at ___ (emphasis omitted). Therefore, I respectfully dissent.

Stewart, J., concurs.