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STATE OF MICHIGAN

COURT OF APPEALS

KRISTIN PETITPREN, Personal Representative of the ESTATE OF KAREN SUE EDWARDS,

Plaintiff-Appellant,

v

THE RIVERS OF GROSSE POINTE-SNF, DR. BRUCE G. JOHNSON, and GERIATRIC ASSOCIATES OF MICHIGAN, PLLC,

Defendants-Appellees,

UNPUBLISHED
September 18, 2025
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No. 367609
Wayne Circuit Court
LC No. 22-000847-NM

Before: LETICA, P.J., and MURRAY and PATEL, JJ.

PER CURIAM.

In this wrongful-death medical malpractice action, plaintiff, Kristin Petitpren, as personal representative of the Estate of Karen Sue Edwards, appeals as of right the trial court's August 21, 2023 order. The order granted summary disposition under MCR 2.116(C)(7) (claim barred by statute of limitations) and (C)(10) (no genuine issue of material fact), in favor of defendants The Rivers of Grosse Pointe-SNF (The Rivers); Dr. Bruce G. Johnson (Dr. Johnson); and Geriatric Associates of Michigan, PLLC (Geriatric Associates). We affirm.

I. BACKGROUND

On January 30, 2019, Karen Sue Edwards (the decedent) was hospitalized. On February 12, 2019, the decedent was discharged from the hospital and transferred to The Rivers, an assisted living facility. The decedent's medical records reflect, upon admission to The Rivers, the decedent had (1) a "[p]ressure ulcer of sacral region" and (2) "[l]ocal infection of the skin and subcutaneous tissue. . . ." Dr. Johnson, a board-certified internal medicine and geriatrics physician, was the decedent's attending physician at The Rivers. He evaluated and treated the decedent while she was a resident. Among other things, the decedent was to receive medical care in relation to her wounds and antibiotics. The decedent, who had a myriad of other health issues and whose condition declined while at The Rivers, was transferred back to the hospital on

March 27, 2019. On April 28, 2019, the decedent died while receiving treatment at a hospital. The decedent's death certificate states she died from atherosclerotic coronary artery disease.

On August 1, 2019, a proceeding for informal probate of the decedent's estate was initiated, and letters of authority were issued to plaintiff. In 2021, plaintiff began the process of initiating a medical malpractice suit against defendants, including submitting a notice of intent (NOI) to file suit. On January 21, 2022, plaintiff filed suit against defendants, alleging the decedent's decubitus ulcers, or bedsores, worsened while in defendants' care. According to plaintiff, the decedent died of sepsis as a result of defendants' malpractice. Attached to the complaint was an affidavit of merit (AOM), supporting plaintiff's claims. Defendants answered the complaint, generally denied liability and alleged the claims were barred by the relevant statutes of limitation. Defendants filed affidavits of meritorious defense to support the decedent died because of her comorbidities, not any negligence on their part. Discovery and motion practice commenced.

In March 2023, plaintiff filed an amended complaint to allege claims of ordinary negligence and medical malpractice. In lieu of answering the amended complaint, Dr. Johnson and Geriatric Associates moved for summary disposition, alleging plaintiff's claims sounded in medical malpractice and were barred by the relevant two-year statute of limitations. The Rivers later moved for summary disposition, raising essentially the same arguments. Plaintiff contested the motions, asserting she pleaded claims for both medical malpractice and ordinary negligence. According to plaintiff, her claims were timely filed and summary disposition was premature because discovery was ongoing.

On August 10, 2023, the parties appeared before the trial court and it waived oral argument, concluding there was a question of fact regarding the dates Dr. Johnson treated the decedent. The trial court also remarked that defendants' motions were premature because certain discovery was still outstanding and depositions needed to be taken. The court denied defendants' motions without prejudice and instructed the parties to appear before a discovery master. But the court did not enter an order outlining its rulings.[1]

Despite its earlier statements, eleven days later, the trial court granted defendants' motions for summary disposition in a written opinion and order. The trial court concluded plaintiff's claims sounded in malpractice, not ordinary negligence. The trial court also concluded plaintiff's medical malpractice claims were barred by the two-year statute of limitations and MCL 600.5852's wrongful-death saving provision. The trial court reached this conclusion after acknowledging that "[t]he deadline for filing [plaintiff's] complaint was ended by the COVID-19 pandemic." This appeal followed.

[1] Plaintiff places great weight on the trial court's statements at the August 10, 2023 hearing. While the trial court verbally stated that summary disposition was premature, this is not controlling because "[t]rial courts speak through their written judgments and orders." *Seifeddine v Jaber*, 327 Mich App 514, 523; 934 NW2d 64 (2019).

II. STANDARDS OF REVIEW

This Court reviews "de novo a trial court's decision on a motion for summary disposition." *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022) (quotation marks and citation omitted). "In determining whether the nature of a claim is ordinary negligence or medical malpractice, as well as whether such claim is barred because of the statute of limitations, a court does so under MCR 2.116(C)(7)." *Bryant v Oakpointe Villa Nursing Ctr, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

> When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010) (citations omitted).]

"Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). "Courts are liberal in finding a factual dispute sufficient to withstand summary disposition." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). "If the pleadings demonstrate that one party is entitled to judgment as a matter of law, or if affidavits and other documentary evidence show that there is no genuine issue of material fact concerning the running of the period of limitations, the trial court must render judgment without delay." *Estate of Dale v Robinson*, 279 Mich App 676, 682; 760 NW2d 557 (2008) (quotation marks and citation omitted).

This Court also reviews "de novo questions of statutory interpretation." *Id*. "To the extent that this case asks [this Court] to interpret [our Supreme Court's] administrative orders . . . for their legal meaning . . ., that is also a question of law that [is] review[ed] de novo." *Carter v DTN Mgt Co*, ___ Mich ___, ___; ___ NW3d ___ (2024) (Docket No. 165425); slip op at 8-9. "De-novo review means that [an appellate court] review[s] the legal issue independently, without deference to the lower court." *Bowman v Walker*, 340 Mich App 420, 425; 986 NW2d 419 (2022) (quotation marks and citation omitted).

III. DO PLAINTIFF'S CLAIMS SOUND IN ORDINARY NEGLIGENCE?[2]

Plaintiff argues the trial court erred by concluding her claims sounded in medical malpractice, not ordinary negligence. We disagree.

The elements for ordinary negligence are: "(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach proximately caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 626; 971 NW2d 716 (2021). Similarly, to prevail in a medical malpractice action, "the plaintiff must establish: (1) the standard of care, (2) breach of that standard of care, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Pennington v Longabaugh*, 271 Mich App 101, 104; 719 NW2d 616 (2006).

"The standard of care is a concept applicable to both ordinary negligence and medical malpractice claims. To prove ordinary negligence, a plaintiff must demonstrate, among other things, that the defendant owed the plaintiff a duty." *Meyers v Rieck*, 509 Mich 460, 471; 983 NW2d 747 (2022). "Once the duty is established, the factfinder [then] determine[s] whether, in light of the particular facts of the case, there was a breach of the duty. In that analysis, the fact-finder determines what constitutes reasonable care under the circumstances." *Id*. (alterations in original; quotation marks and citations omitted). "Under a medical malpractice theory of liability, the defendant owes a duty to exercise that degree of skill, care and diligence exercised by members of the same profession, practicing in the same or similar locality, in light of the present state of medical science." *Id*. (quotation marks and citation omitted).

"[P]roximate cause in a traditional medical malpractice case is statutorily addressed in the first sentence of MCL 600.2912a(2). . . ." *Benigni v Alsawah*, 343 Mich App 200, 213; 996 NW2d 821 (2022). MCL 600.2912a(2) states that "[i]n an action alleging medical malpractice, the plaintiff has the burden of proving that . . . she suffered an injury that more probably than not was proximately caused by the negligence of the . . . defendants." "[P]roximate causation in a malpractice claim is treated no differently than in an ordinary negligence claim, and it is well-established that there can be more than one proximate cause contributing to an injury." *Benigni*,

[2] The Rivers did not move for summary disposition of the ordinary negligence allegations in the first amended complaint, but defendants Dr. Johnson and Geriatric Associates did. Thus, plaintiff responded to the original negligence claim dismissal in its joint response to the dispositive motions. In reply, the Rivers clarified that it did not accept that a properly pleaded negligence claim was raised and that it should be dismissed. Plaintiff does not challenge the propriety of The Rivers' reply brief. Compare *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003), with MCR 2.116(G)(1)(a)(*iii*) ("Reply briefs must be confined to rebuttal of the arguments in the nonmoving" party's brief.). And, as acknowledged by the concurring and dissenting opinion, plaintiff failed to raise on appeal, in the statement of questions presented, a challenge to The Rivers reply brief and its content pertaining to ordinary negligence, resulting in any error being abandoned, see *Maple BPA, Inc v Bloomfield Charter Twp*, 302 Mich App 505, 517; 838 NW2d 915 (2013).

343 Mich App at 214 (alteration in original; quotation marks and citations omitted). However, in a medical malpractice claim, "[e]xpert testimony is required to establish the standard of care and a breach of that standard, as well as causation[.]" *Kalaj v Khan*, 295 Mich App 420, 429; 820 NW2d 223 (2012) (citations omitted). But, expert testimony is not required if "the alleged negligence was within the common understanding of the jury." *Woodard v Custer*, 473 Mich 1, 9; 702 NW2d 522 (2005).

A plaintiff commences an action by filing a complaint "within the applicable statute-of-limitations period. . . ." *Ottgen v Katranji*, 511 Mich 223, 231; 999 NW2d 359 (2023). For medical malpractice actions, the statute of limitations "is generally two years. . . ." *Id.* If a medical malpractice claim is not commenced within the statutorily-prescribed time limits, it is "barred." MCL 600.5838a(2). In contrast, "the statute of limitations for ordinary negligence claims is three years." *Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 234; 859 NW2d 723 (2014). Additionally, there are statutory and procedural requirements attendant to filing medical malpractice claims, see *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 43; 594 NW2d 455 (1999).

"A plaintiff may not evade the appropriate limitation period by artful drafting," such as characterizing a malpractice claim as an ordinary negligence claim. *Simmons v Apex Drug Stores, Inc*, 201 Mich App 250, 253; 506 NW2d 562 (1993). See also *Dorris*, 460 Mich at 43. "A medical malpractice claim is sometimes difficult to distinguish from an ordinary negligence claim. But the distinction is often critical." *Trowell v Providence Hosp & Med Ctrs, Inc*, 502 Mich 509, 517-518; 918 NW2d 645 (2018) (footnotes omitted). "To determine the nature of [a] claim, we seek its gravamen, and therefore we disregard the labels given to the claim[] and instead read the complaint as a whole. . . ." *Meyers*, 509 Mich at 469 (alterations in original; quotation marks and citation omitted).[3] "Michigan is a notice-pleading state" and "[a]ll that is required is that the complaint set forth allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" *Johnson v QFD, Inc*, 292 Mich App 359, 368; 807 NW2d 719 (2011) (second alteration in original; quotation marks and citation omitted). See also *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010) ("[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position.") (alteration in original, quotation marks, and citation omitted).

[3] Plaintiff relies on her affidavit and her expert's affidavit to support her contention that summary disposition was improper. But, we must look to the allegations in plaintiff's amended complaint to determine whether the claims sound in ordinary negligence or medical malpractice. See *Meyers*, 509 Mich at 469. And, although plaintiff's expert avers that plaintiff's claims sound in ordinary negligence, this is not dispositive. See *Trowell*, 502 Mich at 517 ("Whether a claim sounds in ordinary negligence or medical malpractice is a question of law. . . ."). See also *Maiden v Rozwood*, 461 Mich 109, 130 n 11; 597 NW2d 817 (1999) ("[T]he witness did not create a question of fact by merely opining that [the] defendant's performance violated the statutory standard. Whether the statutory standard of care was violated is a legal conclusion. The opinion of an expert does not extend to legal conclusions.").

Our Supreme Court has explained:

> A medical malpractice claim is distinguished by two defining characteristics. First, medical malpractice can occur only within the course of a professional relationship. Second, claims of medical malpractice necessarily raise questions involving medical judgment. Claims of ordinary negligence, by contrast, raise issues that are within the common knowledge and experience of the [fact-finder]. Therefore, a court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or medical malpractice: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions. [*Bryant*, 471 Mich at 422 (quotation marks and citations omitted).]

The relevant question in this appeal is whether plaintiff's claims relate "to matters involving medical judgment outside the common knowledge and experience of the fact-finder." *Meyers*, 509 Mich at 469 (brackets, quotation marks, and citation omitted).[4] If the jury can only

[4] Preliminarily, the trial court must address whether each defendant is a person, or entity, capable of committing medical malpractice. *Estate of Swanzy v Kryshak*, 336 Mich App 370, 377-378; 970 NW2d 407 (2021). There is no dispute (1) all three defendants in this case are capable of committing medical malpractice; and (2) defendants' alleged wrongs occurred in the professional relationship with the decedent. But because plaintiff did not advance a direct negligence claim committed by The Rivers, her theory must be premised on vicarious liability. See *Cox v Bd of Hosp Managers*, 467 Mich 1, 11; 651 NW2d 356 (2002). In order to demonstrate negligence by the agents working at The Rivers, plaintiff was required to show: "(1) the applicable standard of care, (2) breach of that standard, (3) injury, and (4) proximate causation between the alleged breach and the injury" pertaining to The Rivers' agents claimed to have been negligent. *Id*. at 12. We acknowledge that, in filing the first amended complaint, fourteen months after her initial complaint, plaintiff added references to negligence, but the "professional negligence" claim as pleaded by plaintiff failed to comport with *Cox*. Plaintiff did not separately address vicarious liability allegedly committed by The Rivers' agents. And although Michigan is a notice pleading state, "[a] complaint must contain '[a] *statement of the facts, without repetition, on which the pleader relies in stating the cause of action*, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (emphasis added). Nonetheless, courts are not bound by a party's procedural labels and may look beyond the labels to determine the exact nature of the claim to avoid "artful pleading." *Altobelli v Hartmann*, 499 Mich 284, 300; 884 NW2d 537 (2016). In the present case, we conclude that plaintiff's first amended complaint was less than clear that plaintiff was alleging an ordinary negligence claim premised on vicarious liability in light of the failure to identify the employees at issue, their role

evaluate the reasonableness of a medical professional's conduct "after having been presented the standards of care pertaining to the medical issue before the jury explained by experts, a medical malpractice claim is involved." *Bryant*, 471 Mich at 423. This determination is fact-specific, meaning a "court must examine the particular factual setting of the plaintiff's claim" to determine whether it "implicate[s] medical judgment. . . ." *Id*. at 421 n 9. In explaining what constitutes "medical judgment," our Supreme Court has said:

> [M]edical malpractice . . . has been defined as the failure of a member of the medical profession, employed to treat a case professionally, to fulfill the duty to exercise that degree of skill, care and diligence exercised by members of the same profession, practicing in the same or similar locality, in light of the present state of medical science. [*Id*. at 424 (alterations in original; quotation marks and citation omitted).]

For example, if a medical professional fails to take any action to address a known problem, or hazardous condition, the claim may sound in ordinary negligence. See *Id*. at 431 ("If a party alleges in a lawsuit that [a] nursing home was negligent in allowing the decedent to take a bath under conditions known to be hazardous, . . . the claim sounds in ordinary negligence. No expert testimony is necessary to show that the defendant acted negligently by failing to take any corrective action after learning of the problem."). In contrast, a claim that concerns the failure to monitor and assess risks to a patient—such as "the risk of positional asphyxiation posed by bed railings"—usually requires specialized medical knowledge; as a result, the claim would sound in medical malpractice. *Id*. at 426-427.

Examining the particular factual setting that gave rise to plaintiff's claims, it is clear plaintiff's claims implicate medical judgment.[5] Indeed, the crux of plaintiff's claims is that if defendants had provided the decedent with proper care, nutrition, and treatment, she would not have developed additional decubitus ulcers and died of sepsis. These allegations involve questions of medical knowledge and are not issues of ordinary negligence that can be judged by the common knowledge and experience of a jury. Stated otherwise, an ordinary lay person does not know (1) how decubitus ulcers and sepsis form, (2) how they are prevented in patients like the decedent, and (3) how they are treated in patients like the decedent. Even plaintiff acknowledges the decedent required extensive assistance and monitoring because of her medical conditions.

The reasonableness of defendants' actions can only be evaluated when considering whether providers with the same experience would have acted differently given the decedent's medical

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or title, and their supervision. Finally, because plaintiff referred to "professional negligence," she seemingly indicated that licensed nurses, not aides or lower level nurses, were involved.

[5] Dr. Johnson and Geriatric Associates argue that plaintiff's amended complaint did not comply with MCR 2.111(B). "Our Supreme Court has characterized MCR 2.111(B)(1) as consistent with a notice pleading environment. . . . If a party fails to plead facts with sufficient detail, the court should permit the filing of an amended complaint setting forth [the] plaintiff's claims in more specific detail." *Dalley*, 287 Mich App at 305-306 (alteration in original; quotation marks and citations omitted). Although it was inartful, plaintiff's amended complaint was pleaded with sufficient detail.

history and physical condition. How a reasonable medical professional would have provided treatment and care to the decedent is not within the common understanding of laypeople sitting on a jury. Contrary to plaintiff's arguments on appeal, the fact that plaintiff complained about the overall care, or lack of care, provided to the decedent does not automatically transform plaintiff's claims into ordinary negligence claims. It is clear, to determine whether defendants' conduct was unreasonable, the jury would have to know the manner of assistance appropriate when considering the decedent's individualized needs and abilities. This is not within a layperson's common knowledge or experience.

Additionally, contrary to plaintiff's arguments, the fact that the decedent ultimately died does not enable a layperson to simply infer the decedent would not have died if she was provided proper, or different, care by defendants. Importantly, "[t]here must be substantial evidence which forms a reasonable basis for the inference of negligence. There must be more than a mere possibility that unreasonable conduct of the defendant caused the injury. We cannot permit the jury to guess. . . ." *Skinner*, 445 Mich at 165 (quotation marks and citation omitted). Indeed, "[s]omething more should be offered the jury than a situation which, by ingenious interpretation, suggests the mere possibility of [the] defendant's negligence being the cause of the injury." *Id*. (quotation marks and citation omitted). "A valid theory of causation . . . must be based on facts in evidence." *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004). Only an expert can discuss whether defendants' treatment of the decedent caused her death. In other words, an expert is needed to establish, but for the actions or inactions of defendants, the decedent would not have developed ulcers and died of sepsis. Because the facts alleged by plaintiff "raise questions involving medical judgment," her claims sound in medical malpractice. See *Bryant*, 471 Mich at 423-424. Plaintiff was therefore required to comply with "the standards of proof and procedural requirements of a medical malpractice claim as opposed to an ordinary negligence claim. . . ." See *Dorris*, 460 Mich at 45 (citations omitted). This includes timely filing her lawsuit under authority relating to medical malpractice claims. See *id*. at 43; *Simmons*, 201 Mich App at 253.

IV. WERE PLAINTIFF'S MEDICAL MALPRACTICE CLAIMS TIME BARRED?

Next, plaintiff argues her medical malpractice claims were timely filed. We again disagree.

Generally, medical malpractice actions are subject to a two-year statute of limitations from the time the claim accrues. MCL 600.5805(8). See also *Estate of Dale*, 279 Mich App at 683. A medical malpractice claim "accrues at the time of the act or omission that is the basis for the claim of medical malpractice, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim." MCL 600.5838a(1). "[A] wrongful-death medical-malpractice action is governed by the statute of limitations and the accrual statute applicable to medical-malpractice claims." *Estate of Dale*, 279 Mich App at 683. If a medical malpractice claim is not commenced within the statutorily-prescribed time limits, it is "barred." MCL 600.5838a(2).

The alleged medical malpractice occurred sometime between February 12 and March 27, 2019. These are the dates the decedent received care from defendants. At the latest, plaintiff's claims accrued on the last day the decedent allegedly received negligent medical care from defendants, which was March 27, 2019. Two years from March 27, 2019, was Saturday, March 27, 2021. Therefore, absent any tolling, the statute of limitations for the malpractice claims were set to expire, at the latest, on Monday, March, 29, 2021. See MCL 8.6; MCR 1.108(1).

Under MCL 600.2912b, however, a plaintiff alleging medical malpractice must give the defendant written notice at least 182 days before filing suit. See MCL 600.2912b(1). "MCL 600.2912b(1) requires the filing of an NOI and clearly imposes a time period that must elapse before the commencement of an action or proceeding, namely, the 182-day waiting period that must elapse from the time the NOI is submitted before a plaintiff may file suit." *Hubbard v Stier*, 345 Mich App 620, 631; 9 NW3d 129 (2023) (quotation marks omitted). Under MCL 600.5856, "[w]hen a plaintiff submits an NOI before the expiration of the limitations period, and the limitations period otherwise would expire during the 182-day notice period, the statute of limitations is tolled during the 182-day notice period." *Hubbard*, 345 Mich App at 626. "Depending upon when the NOI is submitted, the 'deadline' for filing suit may be days, weeks, or months following the expiration of the NOI waiting period." *Id*. at 632. But, "[t]he statute does not impose a deadline by which such a notice must be filed. Instead, the mandatory NOI provision sets a clock ticking, not unlike a kitchen timer, that must elapse before litigation may be commenced." *Id*. (footnote omitted). In order for tolling to occur, the NOI must have been filed before the expiration of the limitations period. *Id*. at 626.

Under ordinary circumstances, plaintiff was required to submitted the NOI within two years of March 29, 2021, for the limitations period for bringing the claim under MCL 600.5805(8) to have been tolled. The circumstances during this time period were not ordinary, however. On March 10, 2020, Michigan Governor Gretchen Whitmer issued Executive Order No. 2020-4, declaring a state of emergency in Michigan, because of the COVID-19 pandemic. "Out of concern for how COVID-19 affected . . . administration of the courts, within two weeks of that emergency declaration, [our Supreme] Court . . . adopted . . . three COVID-19-related administrative orders." *Carter*, ___ Mich at ___; slip op at 4. First, on March 23, 2020, our Supreme Court entered Administrative Order No. 2020-3, 505 Mich cxxvii, cxxvii-cxviii (2020), with the intent to "extend *all deadlines* pertaining to case initiation and the filing of initial responsive pleadings in civil and probate matters during the state of emergency declared by the Governor related to COVID-19." (Emphasis added.) In relevant part, the order also stated "any day that falls during the state of emergency declared by the Governor related to COVID-19 is not included for purposes of MCR 1.108(1)."[6] *Id*.

"On May 1, 2020, AO 2020-3 was amended . . . to clarify its language." *Carter*, ___ Mich App at ___; slip op at 5. The Supreme Court amended AO 2020-3 to add the following underlined language: "This order in no way prohibits or restricts a litigant from commencing a proceeding whenever the litigant chooses, nor does it suspend or toll any time period that must elapse before the commencement of an action or proceeding." Administrative Order No. 2020-3; 505 Mich cxliv, cxliv-cxlv (2020). On June 12, 2020, our Supreme Court rescinded AO 2020-3, instructing the computation of time would resume on June 20, 2020. Administrative Order No. 2020-18, 505 Mich clviii-clvix. "AO 2020-3 and AO 2020-18 did not toll statutes of limitations, but instead, they affected the counting of the relevant time period for purposes of MCR 1.108(1)." *Carter*, ___ Mich at ___; slip op at 17 (footnote omitted). The statute of limitations in this case was extended

[6] MCR 1.108 concerns the computation of time.

102 days under these administrative orders. See *Compagner v Burch*, 347 Mich App 190, 207-208, 210; 14 NW3d 794 (2023).

On March 10, 2020, plaintiff had one year and 19 days, remaining to file suit under MCL 600.5805(8)'s two-year requirement. On June 20, 2020, plaintiff had the same number of days remaining in the statutory limitations period as she had on March 10, 2020, when the state of emergency went into effect. See *Compagner*, 347 Mich App at 210. Under MCL 600.5805(8), plaintiff had until Friday, July 9, 2021, to file suit. For MCL 600.5856(c)'s tolling provision to apply, plaintiff had to mail the NOI by Friday, July 9, 2021. See MCL 600.2912b(1) and (2). See also *Compagner*, 347 Mich App at 207-208 ("the exclusion period defined by AO 2020-3 and AO 2020-18 was 102 days, from March 10, 2020 to June 20, 2020"). "When [a] defendant receives [an] NOI is irrelevant." See *DeCosta v Gossage*, 486 Mich 116, 126; 782 NW2d 734 (2010).

According to defendants, plaintiff mailed the NOI, at the earliest, on June 21, 2021. Plaintiff did not dispute the date of mailing in the trial court, and does not attempt to do so in this Court. If the NOI was mailed on June 21, 2021, 18 days remained before the statute of limitations expired, thereby tolling the applicable limitations period for 182 days. The 182-day tolling period ended on December 20, 2021, and the limitations period began running again. To timely file the complaint, plaintiff had to file it by Friday, January 7, 2022. Because plaintiff did not do so, plaintiff's January 21, 2022 complaint was untimely when considered in the context of (1) MCL 600.5805(8)'s two-year statute of limitations; (2) MCL 600.5856(c)'s tolling provision, and (3) the COVID-19 related filing extensions in AO 2020-3 and AO 2020-18.

Yet, this analysis does not end our inquiry because "the Legislature has afforded personal representatives additional time in which to pursue legal action on behalf of a decedent's estate." *Estate of Dale*, 279 Mich App at 683. Under MCL 600.5852, which is known as the wrongful-death saving provision, "a personal representative may file a medical malpractice suit on behalf of a deceased person for two years *after* letters of authority are issued, as long as that suit is commenced within three years after the two-year malpractice limitations period expired." *Estate of Christopher P Eversole v Nash*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 366556); slip op at 5-6 (emphasis in original; quotation marks and citations omitted). As already explained above, under MCL 600.5805(8), the limitations period for plaintiff's claims was set to expire on March 29, 2021. However, because the decedent died before the period of limitations had run, and the letters of authority were issued on August 1, 2019, the period of limitations was extended to Monday, August 1, 2021. See *Estate of Christopher P Eversole*, ___ Mich App at ___; slip op at 6 ("MCL 600.5852 plainly provides that the two-year saving period is measured from the date the letters of authority are issued.") (quotation marks and citation omitted.). Plaintiff filed the complaint on January 21, 2022, which ordinarily would be outside even this extended limitations period. The COVID-19 pandemic further complicates this issue because the question becomes whether the wrongful-death saving provision is a deadline applicable to the commencement of a civil case as contemplated by AO 2020-3.

"Principles of statutory construction apply to determine the Supreme Court's intent in promulgating rules of practice and procedure." *City of Detroit v Kallow Corp*, 195 Mich App 227, 230; 489 NW2d 500 (1992). Accordingly, "interpretation of the Supreme Court's administrative orders begins with the language of the orders to discern the Supreme Court's intent and no further judicial construction is necessary if the language is unambiguous." *Linstrom v Trinity Health-*

Mich, 345 Mich App 455, 466; 5 NW3d 99 (2023), rev'd on other grounds ___ Mich ___; 14 NW3d 268 (2024). The same principles governing the interpretation of court rules apply to the interpretation of administrative orders. *Hubbard*, 345 Mich App at 629. "[W]e read an administrative order as a whole, reading the individual words and phrases in context, giving effect to every word and phrase, and avoiding an interpretation that would render any part surplusage or nugatory." *Id*. This Court enforces unambiguous language as it is written without speculation about our Supreme Court's intent. *Id*.

In *Hubbard*, 345 Mich App at 630, this Court considered "what AO 2020-3 tolled and, equally important, what it did not toll." In reconciling what it initially described as "diametrically opposed and inconsistent" language, *id*. at 631-634, the *Hubbard* Court held: "AO 2020-3, by its terms, applies to deadlines," *id*. at 633. This Court then held: "What the amended language clearly does not cover are pre-suit notice requirements, which establish deadlines by which notice must be given." *Id*. at 634. An example of presuit notice requirements are NOIs; thus, the 182 days tolled by filing a NOI within the statute of limitations time period is not extended by AO 2020-3. *Id*. at 633-634.

In *Wenkel v Farm Bureau Gen Inc Co of Mich*, 344 Mich App 376, 383-386; 1 NW3d 353 (2022), this Court considered whether the COVID extensions applied to toll the one-year-back rule in MCL 500.3145(2) of the no-fault act, MCL 500.3101 *et seq*. The *Wenkel* Court held the one-year-back rule was a damage-limitation provision—not a statute of limitations. *Wenkel*, 344 Mich App at 383-386. Therefore, the COVID extensions did not apply. *Id*. To reach that conclusion, the Court had to make a determination as to what deadlines AO 2020-3 was intended to apply. *Id*. In that regard, the Court stated:

> The Michigan Supreme Court's administrative order did not impact the filing deadlines for all pleadings and papers filed in the trial court. Rather, by its terms, the order tolled the "deadlines applicable to the commencement of all civil and probate case-types" and was "intended to extend all deadlines pertaining to case initiation and the filing of initial responsive pleadings in civil and probate matters during the state of emergency. . . ." AO 2020-3. [*Wenkel*, 344 Mich App at 383.]

With respect to whether the wrongful-death saving provision operates as a statute of limitations, this Court recently explained in *Estate of Christopher P Eversole*, ___ Mich App at ___; slip op at 5-6:

> MCL 600.5852 is not a statute of limitations; rather, it is a *saving* provision designed to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions. Section 5852 clearly provides that it is an *exception* to the limitation period, allowing the commencement of a wrongful death action as many as three years after the applicable statute of limitations has expired. In other words, under MCL 600.5852, a personal representative may file a medical malpractice suit on behalf of a deceased person for two years *after* letters of authority are issued, as long as that suit is commenced within three years after the two-year malpractice limitations period expired. [Footnotes, quotation marks, and citations omitted.]

While MCL 600.5852 is not a statute of limitations, it is clearly a deadline to file suit. MCL 600.5852 "provides a maximum of five years from the date the deceased's medical-malpractice claim accrues in which a personal representative may bring a wrongful-death action." *Estate of Christopher P Eversole*, ___ Mich App at ___; slip op at 6. The wrongful-death saving provision is unlike a damage-limitation provision, see *Wenkel*, 344 Mich App at 383-386, and unlike a presuit requirement, see *Hubbard*, 345 Mich App at 630-634. The provision creates a deadline to file suit, *Estate of Christopher P Eversole*, ___ Mich App at ___; slip op at 5-6, and "AO 2020-3, by its terms, applies to deadlines," *Hubbard*, 345 Mich App at 633.

Therefore, under AO 2020-3 and AO 2020-18, the deadline under the wrongful-death saving provision was extended 102 days. See *Compagner*, 347 Mich App at 207-208, 210. The fact that a plaintiff's "filing period began to run before AO 2020-3 took effect" is irrelevant. *Id*. at 210. Our Supreme Court has "specifically rejected the proposition the exclusion period was limited to those whose filing deadline fell within the state of emergency." *Id*. (quotation marks and citation omitted). On March 10, 2020, plaintiff had 16 months, and 22 days, remaining to file suit under MCL 600.5852's two-year-savings period. On June 20, 2020, plaintiff had the same number of days remaining in the statutory limitations period as she had on March 10, 2020, when the state of emergency went into effect. To timely file the complaint, plaintiff had to file it by Thursday, November 11, 2021, but she did not file it until January 21, 2022.

Plaintiff argues her suit was timely filed because she complied with MCL 600.2912b(1) and sent defendants the NOI 182 days before she filed suit. See MCL 600.2912b(1). According to plaintiff, sending the NOI tolled MCL 600.5852's time requirements. But, in *Waltz v Wyse*, 469 Mich 642, 644; 677 NW2d 813 (2004), our Supreme Court concluded the notice-tolling provision now contained in MCL 600.5856(c) did not apply to the wrongful-death saving provision. MCL 600.5852 is neither a statute of limitations nor a statute of repose, but "a *saving* provision designed to preserve actions that survive death in order that the representative of the estate may have a reasonable time to pursue such actions." *Id*. at 655 (quotation marks and citation omitted). While plaintiff urges this Court to ignore these unambiguous conclusions of the Supreme Court, we must follow them unless they "have *clearly* been overruled or superseded. . . ." *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016). Because *Waltz* has not be overruled, this Court is bound by it. See *id*. Plaintiff's filing of the NOI

did not toll MCL 600.5852's deadline.[7] Accordingly, the trial court did not err by concluding plaintiff's medical malpractice claims were time barred.[8] Summary disposition was not premature.

Affirmed.

/s/ Anica Letica
/s/ Christopher M. Murray

[7] Plaintiff also appears to argue that principles of equity should apply to toll the statute of limitations, citing *Mazumder v Univ of Mich Regents*, 270 Mich App 42, 61; 715 NW2d 96 (2006). But, our Supreme Court reversed this Court's judgment, specifically determining that "the court erred in invoking the doctrine of equitable tolling under these circumstances." *Mazumder v Univ of Mich Regents*, 480 Mich 1045, 1045-1046 (2008). Additionally, even if the legal principles outlined in *Mazumder* applied, plaintiff in this case is not entitled to equitable tolling. Plaintiff does not demonstrate any inequity. Rather, plaintiff simply failed to comply with *Waltz*'s well-established holding and timely file her medical-malpractice complaint.

[8] Although plaintiff contends that summary disposition was premature because discovery had not closed, additional discovery did not stand a reasonable chance of uncovering factual support for her argument that her lawsuit was timely filed. The events and dates pertinent to answering the question of whether the statute of limitations expired are undisputed, including the dates that the decedent was treated at The Rivers, the date decedent died, the date plaintiff secured her letters of authority, and the date plaintiff filed suit.