Illinois Official Reports

Appellate Court

Larson v. Crosby, 2024 IL App (4th) 230646

Appellate Court Caption	DEANNA LARSON and MIKE LARSON, Plaintiffs-Appellants, v. DANA CROSBY, M.D.; SIU PHYSICIANS & SURGEONS, INC.; and J. DOE, Defendants-Appellees.
District & No.	Fourth District No. 4-23-0646
Filed	March 26, 2024
Decision Under Review	Appeal from the Circuit Court of Sangamon County, No. 22-LA-89; the Hon. Ryan M. Cadagin, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Warren Danz, of Peoria, for appellants. Thomas H. Wilson and Julieta A. Kosiba, of HeplerBroom, LLC, of Springfield, for appellees.
Panel	JUSTICE STEIGMANN delivered the judgment of the court, with opinion. Justices Doherty and DeArmond concurred in the judgment and opinion.

OPINION

¶ 1 In May 2022, plaintiffs—Deanna and Mike Larson (the Larsons)—filed a complaint against defendants—Dana Crosby, M.D.; SIU Physicians & Surgeons, Inc. (SIU); and "J. Doe" (an unidentified doctor or nurse employed by SIU)—alleging that Crosby, an employee of SIU, negligently left impacted gauze in Deanna's nasal cavity following a surgical procedure, causing severe pain, swelling, and unspecified permanent injury. The complaint also alleged that Deanna was unaware that the leftover gauze was the cause of her symptoms until May 22, 2020.

¶ 2 In April 2023, defendants filed a motion for summary judgment, arguing that the Larsons did not timely file their complaint within the two-year statute of limitations for actions against physicians (735 ILCS 5/13-212(a) (West 2020)). The Larsons responded that the complaint was timely filed.

¶ 3 In July 2023, the trial court entered a written order granting defendants' motion for summary judgment, finding that a reasonable person in Deanna's position would have known by May 1, 2020, of her injury and that it was wrongfully caused. Accordingly, the court found that the complaint, filed May 23, 2022, was untimely.

¶ 4 The Larsons appeal, arguing that the trial court erred by entering summary judgment in favor of defendants because a genuine issue of material fact existed as to whether Deanna knew or should have known on May 1, 2020, of an injury that was wrongfully caused.

¶ 5 We agree and reverse the judgment of the trial court.

¶ 6 ### I. BACKGROUND

¶ 7 #### A. The Complaint

¶ 8 On May 23, 2022, the Larsons filed a complaint against Crosby, SIU, and other defendants, alleging several counts of medical negligence and loss of consortium. In September 2022, plaintiffs filed an amended complaint, which is the operative complaint in this appeal, dismissing all defendants except Crosby, SIU, and "J. Doe." (J. Doe is not participating in the appeal.) The complaint alleged generally that on February 23, 2020, Crosby performed a surgical procedure on Deanna and placed impacted gauze in her nasal cavity to prevent bleeding. (Depositions later revealed that Crosby's treatment was a result of Deanna's presenting to the emergency room with a severe nosebleed). The complaint further alleged that (1) on March 3, 2020, at a follow-up appointment, Crosby failed to remove all of the gauze and (2) Deanna began having severe pain and other symptoms and "was unaware of the leftover gauze until May 22, 2022[,] when she was made aware that [the leftover gauze] was the cause of her symptoms." (We note that the complaint alleges that Deanna discovered her injury was wrongfully caused by leftover gauze on May 22, 2022, instead of 2020. We presume this incorrect date is simply an uncorrected typographical error.)

¶ 9 Count I alleged that Crosby was directly liable for negligently failing to remove all of the impacted gauze from Deanna's nasal cavity; count II alleged that SIU was vicariously liable as Crosby's employer; count VI alleged that an unknown nurse or doctor (J. Doe) negligently failed to remove all of the gauze at a March 3, 2020, appointment; and counts VII, VIII, and XI alleged loss of consortium.

¶ 10 B. Defendants' Motion for Summary Judgment

¶ 11 In April 2023, defendants filed a motion for summary judgment, arguing that the Larsons did not file their lawsuit within the two-year statute of limitations for claims against physicians. See *id.* Defendants asserted that the statute of limitations expired on March 3, 2022, which was two years after the March 3, 2020, follow-up appointment at which some, but not all, of the impacted gauze was removed from Deanna's nasal cavity. Defendants contended that, although the Larsons attempted to rely on the "discovery rule" to allege that Deanna did not become aware of the leftover gauze until May 22, 2020, the record established that she was aware of the leftover gauze on May 1, 2020. As a result, defendants argued, the Larsons should have initiated the lawsuit on or before May 1, 2022, making their May 23, 2022, filing untimely. (We note that May 22, 2022, was a Sunday.)

¶ 12 In support of their motion, defendants attached the depositions of (1) Taylor Manivannan and (2) Kellie Bibb. (Kellie Bibb is referred to in the medical records as "Kellie Sidener." At the time of her deposition, she had changed her last name to Bibb. We will refer to her as Sidener to maintain consistency with the record.)

¶ 13 1. *Deposition of Taylor Manivannan*

¶ 14 Taylor Manivannan testified that she was a physician assistant employed by Springfield Clinic. (We note that throughout the record, Manivannan is alternately referred to as "Taylor Manivannan" and "Taylor Manning." Because she gave the surname "Manivannan" at her deposition, we will refer to her in that manner.) At the time of the deposition, Deanna was still Manivannan's patient, and Manivannan was familiar with Deanna's medical records. In February 2020, Deanna went to St. John's Hospital in Springfield, Illinois, with a nosebleed and was ultimately taken to the operating room by Crosby.

¶ 15 On March 6, 2020, Manivannan saw Deanna for a complaint of left ear pain and pressure behind her left eye. Manivannan thought Deanna had some sinus pressure or temporomandibular joint disorder (TMJ) and treated her with prednisone to reduce inflammation, which was "appropriate for both TMJ as well as general sinus pressure or sinus congestion."

¶ 16 Manivannan next saw Deanna on March 17, 2020. On that date, Deanna complained of continued discomfort above her left eye. Deanna reported that the discomfort had been ongoing since she had her nose packed for the nosebleed. Deanna also reported that the prednisone had not helped her symptoms. Manivannan conducted a physical examination and documented tenderness over the left eyebrow and left temporal artery. Manivannan suspected the cause could be "temporal arteritis," which is treated with a "much larger dose of Prednisone" than what she had previously prescribed. Regarding Deanna's sinus concerns, Manivannan said "she needed to go to [an ear, nose, and throat physician (ENT)] to kind of take a look and see what might be going on." Manivannan testified that Deanna was going to see her existing ENT at SIU the following week, so Manivannan did not refer Deanna to a new ENT at Springfield Clinic.

¶ 17 Manivannan next saw Deanna on April 21, 2020. Deanna complained that "she was having trouble with her smell, and that everything she was smelling or tasting was tasting like quote, puke, unquote, and her appetite had been very diminished." Deanna did not feel that antibiotics had helped her at all. (Manivannan was unsure if Deanna meant the prednisone or if she had been prescribed antibiotics at some point.) Manivannan conducted a visual examination with

a flashlight and documented that "the nasal mucosa appears to be mildly erythematous [(which Kellie Sidener later explained in her own deposition meant 'red')], but there is not significant edema ***. Nothing terribly abnormal is noted in the nasal cavity."

¶ 18 Manivannan also testified that at the April 21, 2020, appointment, Deanna told her she had spoken to her existing ENT about her sinus complaints and was told that SIU was not seeing patients in the office at that time, likely due to COVID-19. Deanna requested a second opinion from a different ENT, so at that time Manivannan referred Deanna to an ENT at Springfield Clinic. Manivannan stated that she "wanted [Deanna] to see Kellie Sidener and Dr. [Xinyan] Huang," so she made a specific referral. Sidener was a nurse practitioner, and Dr. Huang was a physician who was board certified in otolaryngology.

¶ 19 Manivannan next saw Deanna on May 22, 2020. At that time, Manivannan was aware that Deanna had seen Sidener on May 1, 2020, and Manivannan had reviewed the medical record from that visit. In fact, Sidener had sent the record to Manivannan directly following the visit. Manivannan was aware that Sidener had noted at that visit that "[t]here [was] a significant buildup in the left nasal passage, which was carefully removed using suction and forceps. Appears to be deteriorating packing surrounded by green, brown mucous[.]"

¶ 20 Manivannan also answered questions about her own visit with Deanna on May 22, 2020. After that visit, Manivannan noted that Deanna "report[ed] that she still has some packing in her sinuses, and she really wants to know why they can't just take her to the [operating room] to get this out. She is concerned that the infection will persist as long as the packing is in there." Manivannan testified that her note was based on Deanna telling Manivannan there was packing in her nose, not Manivannan telling Deanna there was packing left in her nose.

¶ 21 On cross-examination, Manivannan testified that she was not an ENT provider and, accordingly, she "[did not] ever pack or remove anything from anyone's nose." Manivannan also testified that at the April 21, 2020, appointment, Deanna told her that she was trying to get in touch with Crosby's office, but they would not call her back, which is why Manivannan thereafter worked with Deanna to get a referral to an ENT physician at Springfield Clinic.

¶ 22 Manivannan also testified on cross-examination that she reviewed a radiology report of Deanna's computed tomography (CT) scan of April 29, 2020, and observed that the radiologist found moderate to severe mucosal thickening of the left maxillary sinus. Counsel also asked Manivannan the following:

> "Q. You are aware that [Sidener] stated [on May 1, 2020] there was a significant buildup in the left nasal passage?
>
> A. Yes.
>
> Q. And she stated that it appears to be deteriorating packing surrounded by green, brown mucous, is that right?
>
> A. Yes, [Sidener] did put that in her note.
>
> Q. Was that your impression from that that the removal included some gauze that had been left in the cavity?
>
> A. Well, after reading [Sidener's] note, that's what [Sidener] wrote that she said that it could be deteriorating packing surrounded by the mucous. So, that would be my impression also reading what [Sidener] wrote."

¶ 23 Manivannan agreed that at the May 22, 2020, visit, she made a note that Deanna "continues to follow with the ENT and Infectious Disease for a chronic sinusitis that has developed since

Dr. Crosby left packing in her sinus." Manivannan explained that note was based upon "what [Deanna] was reporting to me, and what we gathered from [Sidener's] note as well, what [Sidener] had told the patient, and then the patient told me."

¶ 24 2. *Deposition of Kellie Sidener*

¶ 25 Kellie Sidener testified that she was employed at Springfield Clinic as a nurse practitioner. From 2015 to 2022, she was employed in the ENT department and was supervised by Dr. Huang.

¶ 26 Sidener stated that she first became involved with Deanna's care on April 21, 2020, when she received Manivannan's referral. In the referral document, Manivannan wrote that Deanna was complaining of symptoms that began about two months prior, following the surgical procedure by Crosby at SIU. Sidener was familiar with the surgical procedure that Crosby performed, albeit from the perspective of a nurse practitioner and not from the perspective of a surgeon who performs such surgeries. She explained that, during the type of procedure Deanna had, the surgeon "cauterizes the sphenopalatine artery in the back of the nose in hopes of stopping a nose bleed." Sidener continued, "[The surgeon] then put[s] gel foam packing or something to [*sic*] that nature in the back of the nose." Sidener testified that she has never assisted an ENT surgeon in performing that surgery; however, prior to treating Deanna, she had treated patients who had undergone that surgery. Sidener stated that the surgery was not common and agreed with counsel's characterization of it as a "last ditch effort" to stop a nosebleed that could not be controlled through more conservative means. Sidener testified that infection "could be" a potential side effect of that type of surgery.

¶ 27 After receiving the referral, Sidener communicated with Dr. Huang, and he recommended ordering a CT scan of the sinuses, which was completed on April 29, 2020. Sidener testified that she reviewed the radiologist's report of Deanna's CT scan, and the significant findings included "[mucosal] thickening occupying much of the left maxillary sinus, [a] postoperative defect along the posterior medial wall, and minimal areas of mucosal thickening in the right maxillary sinus." Sidener testified that the description of mucosal thickening led her to believe there was potentially a chronic sinus infection. She explained that moderate to severe mucosal thickening usually means it is a chronic issue. By chronic, she meant more than two months.

¶ 28 Sidener saw Deanna in clinic on May 1, 2020. At that visit, Sidener first took a history from Deanna, who reported having an abnormal sense of smell and a foul taste in her mouth since the February surgery done by Crosby. Sidener also noted that (1) Deanna had lost 12 pounds in the last three months, (2) the CT scan showed moderate to severe mucosal thickening in the left maxillary sinus, and (3) Deanna had been taking an antibiotic and using sinus rinses and a nasal steroid spray.

¶ 29 Sidener performed a physical examination with a diagnostic flexible nasopharyngoscopy. She documented a "significant build-up in the left nasal passage, which was carefully removed using suction and forceps." She also noted that "it appears to be deteriorating packing surrounded by green[-]brown mucous." Counsel then asked Sidener the following questions, and Sidener gave the following answers:

> "Q. So can you tell me *** what it was that you were seeing that day that in your mind appeared to be deteriorating packing?
>
> A. A glob of something covered in snot, gross, sorry.

Q. *** So, the conclusion in your mind that this was potentially deteriorated packing was based on your observation of it as opposed to any type of pathology examination, or laboratory, or anything like that?

A. Yes.

***

Q. Then if you would turn to the next page [of the May 1, 2020, medical record,] you reference you had a lengthy discussion with [Deanna that day]?

A. Yes.

Q. Do you have any independent memory of that conversation today?

A. No.

Q. So, we would have to rely just on what you documented and what your normal customary practice would be?

A. Yes.

Q. That would include practicing within the standard of care for a nurse practitioner?

A. Yes.

Q. Can you explain, *** based on your custom and practice, as well as what records you created that day, what you told [Deanna]?

A. I would have explained to her and showed her what was taken out of her nose.

Q. Okay.

A. I would have asked her does she feel better, or is this the same, did this help. Then I would have explained the findings from my flexible scope, and what we are looking for is any masses, or tumors, or anything that would have caused her symptoms. And I would have explained to her that while her nasal exam was abnormal, her scope exam was normal. [(Sidener explained that by normal, she meant that she did not find any masses or tumors.)]

***

Q. As far as how does she feel after the examination and the scope exam, she reported to you that she had an immediate improvement in her symptoms?

A. Yes.

Q. So, removing that glob of whatever it was made her feel better?

A. According to my note, yes.

Q. That's what she would have obviously told you?

A. Yes.

Q. Would you have told her that what you removed was possibly residual packing from the gauze in her nose?

A. I would have said I am unsure, but it is possible.

Q. Then you actually document that in the last sentence under the plan, first paragraph, I am unsure of whether the patient had residual packing present that was deteriorating causing her abnormal taste and smell, correct?

A. Yes.

Q. So, you weren't in your own mind positive?

A. I was not.

Q. But you would have shared your suspicions with [Deanna], correct?

A. I would have said it was possible.

Q. Okay. When you say it is possible, it is possible that it was deteriorating packing?

A. Yes."

¶ 30 Sidener then answered questions about a visit note from Deanna's May 13, 2020, visit with Dr. Huang. Dr. Huang's note from that date reads as follows:

> "Since [the February 23, 2020, surgical procedure,] [Deanna] has experienced dysosmia and dysgeusia. She reported constant foul smell. She reports left nasal congestion with clear discharge. She has left the [*sic*] facial pressure and headache. CT of sinus on April 29, 2020, confirmed left maxillary sinus thickness."

Dr. Huang also noted that he performed a physical examination and observed that Deanna's left nasal cavity was "filled with purulent dry scab, occupied left middle meatus, which was carefully suctioned clean and culture was sent [to the lab]."

¶ 31 Sidener was aware that the culture came back positive for a Pseudomonas sinus infection. Sidener testified that Pseudomonas is a common bacteria that is found in soil and water. It was possible that a sinus infection resulting from this type of bacteria could be caused simply as a complication from the surgery, irrespective of whether all the packing was removed.

¶ 32 Sidener then answered questions about a "task detail communication" relating to Manivannan's May 22, 2020, visit with Deanna. Manivannan documented that Deanna had been told that Dr. Huang cleaned out packing from her sinus, but there was still packing left. Deanna wanted to know why it could not be removed. Sidener passed the message on to Dr. Huang, who responded that Deanna misunderstood what he had told her at the May 13, 2020, visit, and there was no more packing left in her nose—it was all removed. Sidener testified, "[Dr. Huang] is saying that there was no packing under his exam. It was only debris, and all that was cleaned, but would re-accumulate due to the infection." That information was passed to Manivannan so she could relay it to Deanna.

¶ 33 On cross-examination, the Larsons' attorney asked Sidener the following questions, and Sidener gave the following answers:

> "Q. But it was your understanding [when discussing Deanna's medical history with Manivannan prior to seeing Deanna] that [Deanna] had packing put up into the left nasal cavity, correct?
>
> A. I don't—I don't think it was my understanding of anything like that at the time. I just know that she had the procedure and she was having issues.
>
> Q. In that procedure, is it typical that there would be packing placed in the nasal cavity?
>
> A. Yes.
>
> Q. So, that would have been your impression at that time?
>
> A. No, because packing dissolves on its own. The packing that is used in that type of surgery is a dissolvable packing. So, it would not have been my understanding that that is what's going on.

Q. On—you were aware that on March the 3rd of 2020 that Dr. Crosby removed the packing?

A. I am not aware of that.

Q. If [s]he were to place the packing in, would [s]he do some type of count normally to show how much [s]he put in?

A. I don't know what she does during her surgery.

***

Q. I am just asking what is the procedure, the normal procedure?

A. From my experience working in the main operating room, when sponges or the radiopaque sponges are used during a surgery, meaning they can be seen on an [X]-ray, if there is a question, those are counted. NasoPore packing, Surgifoam, Surgical, that stuff is not counted because that is biodegradable, and it will degrade on its own.

***

Q. Is it true that you told [Deanna] that you had removed packing that had been left in the nostril?

A. I would not have told her that it was definitely packing because I was unsure of that.

Q. But in any event that was your impression at the time of your physical exam, is that correct?

A. I was under the impression it was possible.

Q. The gauze was called Xeroform gauze, is that correct? Are you familiar with the gauze that was placed?

A. I am not."

¶ 34 The Larsons' counsel then asked Sidener about the medical record from March 3, 2020, pertaining to Crosby's removal of the gauze. The following colloquy ensued:

"A. It appears that Dr. Crosby's note said that gauze was removed, yes.

Q. In that procedure, it mentions the type of gauze. Do you see that?

A. I do.

Q. Can you explain that type of gauze?

A. Not in this setting, no. I have used this type of gauze to pack abscesses in the past.

Q. I mean can you explain that a little more, that is to the type of gauze it was?

A. So Xeroform comes in a little container, and it is very tiny, and you pull, and you pull, and you pull, and you pack it into a wound that has been irrigated.

Q. It is what, a cloth type of gauze?

A. Vaseline coated gauze.

Q. From the description of this exhibit, is there a way to tell how much gauze they removed?

A. No.

Q. Would you normally expect that if Dr. Crosby packed the [sinus] cavity on February 23rd of 2020 and then removed it on March 3rd of 2020, that there would be

some sort of a count as to the extent of the gauze, or how much was removed, or how much was placed?

A. I have no opinion on that.

Q. Okay.

A. I have never worked with Dr. Crosby. I have no idea.

***

Q. You mentioned earlier that some of this packing could be, could dissolve I guess, is what I would explain, is that correct?

A. Not that packing.

Q. Okay, explain that.

A. Xeroform gauze does not degrade. I was referring to Surgicel, NasoPore, and Surgifoam."

¶ 35 Defendants' counsel then reexamined Sidener and asked the following questions in summary:

"Q. *** [J]ust so we are very clear on what you observed and what you told [Deanna] on May 1st, 2020, is you note that it appeared, the material you removed appeared to be deteriorated packing with mucous?

A. Yes.

Q. You weren't a hundred percent certain, correct?

A. Yes.

Q. But that was your impression at the time?

A. Yes.

Q. And that's what you would have shared with [Deanna], is it appears to be deteriorated packing, but you didn't tell her I am a hundred percent positive what it was?

A. Yes."

¶ 36 C. The Larsons' Response to Defendants' Motion for Summary Judgment

¶ 37 In June 2023, the Larsons filed a response to defendants' motion for summary judgment, arguing that they *did* file their complaint within the statute of limitations for claims against the physicians. Specifically, the Larsons argued that there was no evidence of injury or its wrongful cause at the May 1, 2020, visit with Sidener because, at that time, Sidener was under the impression that the packing used was biodegradable and would dissolve on its own. Sidener's impression at that visit was that Deanna was suffering from a sinus infection, which could be caused simply as a complication of surgery.

¶ 38 The Larsons further argued that it was not until the May 22, 2020, visit with Manivannan that Deanna was told "that the gauze may have been wrongfully allowed in her nasal cavity, which caused the infection *** and she would have [been] told that the gauze was not biodegradable."

¶ 39 The Larsons supported their response with an affidavit from Deanna, in which she asserted that on May 1, 2020, Sidener "removed debris from my nose but did not state exactly what it was that she removed." Deanna further averred that, on May 22, 2020, Manivannan "was the

medical provider who disclosed to me that it was in fact gauze that was left in my nasal cavity from Dr. Crosby. It was not until this visit that I learned exactly what was left in my nose."

¶ 40 Accordingly, the Larsons contended, the statute of limitations did not begin running until May 22, 2020, and their May 23, 2022, filing was timely.

¶ 41 D. The Trial Court's Ruling

¶ 42 In July 2023, the trial court entered a written order granting defendants' motion for summary judgment. (We note that the docket reflects the court conducted a hearing on the motion in June 2023 and heard arguments from the parties.) The court noted that the Larsons filed suit on May 23, 2022, which was more than two years after the date of the allegedly negligent removal of the gauze on March 3, 2020; therefore, they invoked the "discovery rule" to allege that Deanna was not aware of the leftover gauze until May 22, 2020. The court found as follows:

> "The medical records do not establish that any 'retained' gauze was removed from [Deanna's] nasal cavity after the March 3, 2020, visit to Dr. Crosby. The only 'foreign' material removed was what Nurse Sidener believed to be deteriorating packing during the May 1, 2020, visit. While Nurse Sidener was not positive the material she removed was 'packing,' that was her belief at the time, and so she advised [Deanna], who reported an immediate improvement in her symptoms. Thus, there is no dispute of fact that, as of May 1, 2020, a reasonable person in [Deanna's] position would have known of her injury and that a foreign substance remained in her nasal cavity, commencing the running of the statute of limitations.
>
> *** Plaintiffs also offer the affidavit of Deanna Larson, seeking to contradict her own medical records and testimony of her Springfield Clinic providers. However, the commencement of the statute of limitations is based on an objective test, not the subjective test of the individual plaintiff. Otherwise, a plaintiff in any case involving a non-traumatic injury could prevent the running of the statute of limitations by averring her lack of knowledge of the facts, even if those facts, as here, indisputably would have put a reasonable person on inquiry.
>
> ***As there is no genuine issue of material fact that the only 'foreign' material removed from [Deanna's] nasal cavity after March 3, 2020, was the 'deteriorated packing' described by Nurse Sidener, and Nurse Sidener's testimony and medical record establishes that sufficient information was provided to [Deanna] at that time as to put a reasonable person on notice to inquire if she had a cause of action[,] the statute of limitations commenced to run at that time[,] and this action was filed more than two years after a reasonable person 'knew or should have known' of her injury and that it was wrongfully caused."

¶ 43 The trial court entered summary judgment in defendants' favor as to all counts in the amended complaint.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 The Larsons appeal, arguing that the trial court erred by entering summary judgment in favor of defendants because a genuine issue of material fact existed as to whether Deanna knew or should have known on May 1, 2020, of an injury that was wrongfully caused.

¶ 47 We agree and reverse the judgment of the trial court.

¶ 48 A. The Applicable Law

¶ 49 1. *Summary Judgment*

¶ 50 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2022).

¶ 51 "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." (Internal quotation marks omitted.) *Monson v. City of Danville*, 2018 IL 122486, ¶ 12, 115 N.E.3d 81. When examining whether a genuine issue of material fact exists, a court construes the evidence in the light most favorable to the nonmoving party and strictly against the moving party. *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 22, 131 N.E.3d 488; see *Castello v. Kalis*, 352 Ill. App. 3d 736, 743, 816 N.E.2d 782, 788 (2004) ("In deciding whether a ruling for summary judgment is appropriate, we construe the record strictly against the movant and liberally in favor of the nonmoving party.").

¶ 52 Summary judgment is a drastic means of disposing of litigation and "should be allowed only when the right of the moving party is clear and free from doubt." (Internal quotation marks omitted.) *Beaman*, 2019 IL 122654, ¶ 22. "Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102, 607 N.E.2d 1204, 1209 (1992).

¶ 53 "The party moving for summary judgment must affirmatively show a clear legal right thereto free from doubt, and if any facts upon which reasonable persons may disagree are identified, or inferences which may be drawn from those facts lead to different conclusions, the court must deny the motion and direct that resolution of those facts and inferences be made at trial." *Dockery v. Ortiz*, 185 Ill. App. 3d 296, 305, 541 N.E.2d 226, 231 (1989).

¶ 54 A trial court's entry of summary judgment is reviewed *de novo*. *Outboard Marine*, 154 Ill. 2d at 102. "An order allowing summary judgment will be reversed on appeal if the reviewing court determines that a genuine issue of material facts exists." *Dockery*, 185 Ill. App. 3d at 305.

¶ 55 2. *The Discovery Rule*

¶ 56 Section 13-212(a) of the Code of Civil Procedure (735 ILCS 5/13-212(a) (West 2020)) establishes a two-year statute of limitations for claims against physicians and specifically provides as follows:

> "Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which

> the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death."

¶ 57 Embedded in the language of section 13-212(a) is the doctrine known as the "discovery rule," under which " 'a cause of action accrues, and the limitations period begins to run, when the party seeking relief knows or reasonably should know of an injury and that it was wrongfully caused.' " *Clark v. Children's Memorial Hospital*, 2011 IL 108656, ¶ 121, 955 N.E.2d 1065. Put another way, "[t]he limitations period begins to run when the plaintiff becomes aware that the cause of his problem stems from another's negligence and not from natural causes." *Saunders v. Klungboonkrong*, 150 Ill. App. 3d 56, 60, 501 N.E.2d 882, 885 (1986).

¶ 58 "In many, if not most, cases the time at which an injured party knows or reasonably should have known both of his injury and that it was wrongfully caused will be a disputed question to be resolved by the finder of fact." *Witherell v. Weimer*, 85 Ill. 2d 146, 156, 421 N.E.2d 869, 874 (1981); see *Clark*, 2011 IL 108656, ¶ 123 (" 'The time at which a party has or should have the requisite knowledge under the discovery rule to maintain a cause of action is ordinarily a question of fact.' "). However, "[w]here it is apparent from the undisputed facts *** that only one conclusion can be drawn, the question becomes one for the court." *Witherell*, 85 Ill. 2d at 156.

¶ 59 B. The Arguments of the Parties

¶ 60 The Larsons argue that summary judgment was inappropriate because "there is a genuine dispute of when [Deanna] received notice that [her injury] was wrongfully caused." They point to Sidener's testimony that, on May 1, 2020, she "would not have told [Deanna] that it was definitely packing because [Sidener] was unsure of that." They also contend that, even if Sidener believed she removed packing, she believed it was biodegradable packing and not nonbiodegradable gauze. According to the Larsons, the presence of biodegradable packing would not indicate any negligent or wrongful act due to its self-dissolving nature. Accordingly, they assert, on May 1, 2020, neither Sidener nor Deanna had reason to suspect that any medical error had occurred. The Larsons maintain that Deanna could not have had reason to know of any wrongful act until she had reason to know nonbiodegradable gauze was left in her sinus cavity, which, Deanna averred in her affidavit, did not occur until her appointment with Manivannan on May 22, 2020.

¶ 61 Defendants respond that summary judgment was proper because "the undisputed facts lead to but one conclusion"—namely, that "[Deanna] had actual knowledge of her alleged injury and that it may have been wrongfully caused on May 1, 2020." Defendants point primarily to Sidener's deposition and contend that, "on May 1, 2020, [Deanna] [(1)] knew of her symptoms, [(2)] expressed dissatisfaction with Dr. Crosby's care, *** [(3)] was undeniably told of what Nurse Sidener believed to be a foreign material in her nose[,] and [(4)] reported immediate relief upon its removal." Defendants further argue that Deanna's affidavit did not create an issue of fact because it

> "seeks to contradict both her contemporaneous medical records and Ms. Mannivannan's [*sic*] sworn testimony that it was not Ms. Mannivannan [*sic*] who told

> [Deanna] of the residual packing in her nasal cavity, but rather, [Deanna] who walked into the appointment on May 22, 2020 and told Ms. Mannivannan [*sic*] that she still had packing in her nose."

¶ 62 We agree with the Larsons that summary judgment was inappropriate in this case because the facts of record lead to more than one reasonable inference about when Deanna was sufficiently apprised of information to put her on notice that she had suffered an injury that was wrongfully caused. See *Saunders*, 150 Ill. App. 3d at 61 ("When reasonable persons may fairly draw differing inferences from those facts which are not in dispute, the motion [for summary judgment] must be denied.").

¶ 63 C. This Case

¶ 64 At the outset, we reiterate that this case arises from an order granting summary judgment. "The purpose of summary judgment is not to try a question of fact, but to determine whether one exists." *Dockery*, 185 Ill. App. 3d at 304. At the summary judgment stage, we construe the evidence in the light most favorable to the Larsons (*Beaman*, 2019 IL 122654, ¶ 22), and defendants bear the burden to show that they are entitled to summary judgment, "free from doubt" (*Dockery*, 185 Ill. App. 3d at 305). Accordingly, the question before us is not whether Deanna has proven that the discovery rule tolled the statute of limitations to May 22, 2022, but whether defendants have demonstrated that the *only* conclusion to be drawn from the evidence is that Deanna had reason to know on May 1, 2020, that her injury was wrongfully caused.

¶ 65 Construing the evidence in that manner, we agree with the Larsons that a genuine issue of material fact existed regarding whether Deanna should have known on May 1, 2020, that her injury was wrongfully caused.

¶ 66 It is clear that sometime before May 1, 2020, Deanna was aware of her injury. She had developed a sinus infection following the procedure by Crosby and sought medical treatment to alleviate the harsh symptoms she was experiencing. However, the question of when she was on notice that the infection may have been wrongfully caused is not so straightforward in a case like this, where, for much of Deanna's course of treatment, there arguably exists an apparently innocent cause for the injury.

¶ 67 In *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 414-15, 430 N.E.2d 976, 980 (1981), the supreme court acknowledged that there existed "much uncertainty" around the discovery rule and attempted to provide some clarity. The court wrote the following:

> "[W]e have held that the event which triggers the running of the statutory period is not the first knowledge the injured person has of his injury, and, at the other extreme, we have also held that it is not the acquisition of knowledge that one has a cause of action against another for an injury he has suffered. Rather, we have held in *Witherell v. Weimer*[, 85 Ill. 2d 146, 156, 421 N.E.2d 869, 874 (1981),] and *Nolan v. Johns-Manville Asbestos*[, 85 Ill. 2d 161, 171, 421 N.E.2d 864, 868 (1981),] that the statute starts to run when a person knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." *Id.* at 415.

¶ 68 In other words, the aggrieved party need not know he has an actionable cause for negligence before the limitations period begins running; the period begins when "the injured person becomes possessed of sufficient information concerning his injury and its cause to put

a reasonable person on inquiry to determine whether actionable conduct is involved." *Id.* at 416.

¶ 69 Although *Knox College* is a case involving fraud and breach of contract claims arising from the faulty installation of a roof, the general rule it promulgates applies in all discovery rule cases. In *Stark v. Johnson & Johnson*, 10 F.4th 823, 825 (7th Cir. 2021), the Seventh Circuit construed Illinois case law regarding the discovery rule in medical malpractice claims and reversed the district court's order granting summary judgment in the plaintiff's product liability claim against a pelvic mesh manufacturer. *Stark* provides helpful guidance regarding the "wrongfully caused" prong in medical malpractice cases like the one before us, writing the following:

> "We must also consider the specifics of [the plaintiff's] medical history against the backdrop of a more general principle. Ms. Stark—like all other patients—should not be penalized for trusting her physicians' advice and not suspecting too quickly that her poor medical outcome was caused by a negligent actor.
>
> Medical treatment of human disease can be complex and full of uncertainty. Success is not guaranteed, and a surgery's 'failure' or shortcomings should not necessarily be sufficient to tell a patient that she should start investigating possible claims against her physicians or the manufacturers of the products they used. Although we have made this point repeatedly in medical malpractice cases, it applies with equal force to product liability claims, where patients often confront similar circumstances: faced with some illness or injury, a patient seeks counsel from a trusted physician, follows the physician's suggested course of treatment, and then experiences an unfortunate outcome.
>
> That unfortunate outcome, by itself, is not sufficient to start the statute of limitations clock. [Citations.] There must be some other circumstances present that would prompt a reasonable person—meaning, a reasonable patient, not, we emphasize, a reasonable doctor or a reasonable lawyer—to suspect or investigate a potential wrongful cause." *Id.* at 836-37.

See *Clark v. Galen Hospital Illinois, Inc.*, 322 Ill. App. 3d 64, 70, 748 N.E.2d 1238, 1243 (2001) (" 'If the injury is *** an aggravation of a physical problem which may naturally develop, absent negligent causes, a plaintiff is not expected to immediately know of either its existence or potential wrongful cause.' ").

¶ 70 In the present case, Sidener testified that the bacteria that caused Deanna's infection was common and it was possible that a sinus infection resulting from this type of bacteria could be caused simply as a complication from the surgery, irrespective of whether all the packing was removed. A reasonable inference from that testimony is that Deanna's infection was simply an adverse result from a properly performed surgical procedure.

¶ 71 We agree with the analysis in *Stark*. As that case illustrates, because an innocent explanation existed for the infection, Deanna needed "something more" to inform her that the infection could be the result of medical error.

¶ 72 Defendants argue that Deanna was informed of "something more" at the May 1, 2020, appointment when Sidener removed the "glob of something covered in snot" from Deanna's sinus and subsequently discussed it with Deanna. Defendants contend that, after that appointment, the only conclusion that could be drawn was that Deanna "had actual knowledge

of her injury and that it may have been wrongfully caused." We disagree. Sidener initially testified at her deposition that she had no independent memory of her conversation with Deanna on May 1, 2020, and had to rely on her usual practice and notes to testify about what she "would have" told Deanna at that appointment. Sidener testified that, based upon her custom and practice and her records—not her independent recollection—she "*would have* explained to [Deanna] and showed her what was taken out of her nose." (Emphasis added.) When counsel asked Sidener if she *would have* told Deanna that she had removed residual packing from Deanna's nose, Sidener answered, "I *would have* said I am unsure, but it is possible." (Emphasis added.)

¶ 73 Sidener acknowledged that she documented in Deanna's medical record that she was "unsure" whether it was deteriorating packing that was causing Deanna's abnormal taste and smell. Sidener also reiterated that she was not positive the substance was deteriorating packing, but she stated she "*would have*" (emphasis added) shared her suspicions with Deanna.

¶ 74 On cross-examination by the Larsons' attorney, Sidener stated she "*would not have* told [Deanna] that it was definitely packing because [she] was unsure of that." (Emphasis added.) When asked, apart from what she told Deanna, whether it was Sidener's own *impression* that the substance was deteriorating packing, Sidener again communicated uncertainty, answering only that she "was under the impression it was possible."

¶ 75 Later, on redirect examination, in response to a series of leading questions by defense counsel, Sidener testified that although she was not certain the substance she removed was deteriorating packing, Sidener *would have* told Deanna that she suspected the substance she removed was deteriorating packing.

¶ 76 Sidener's testimony was far from clear regarding what exactly she told Deanna on May 1, 2020. She expressed uncertainty not only about what she removed from Deanna's nose, but also regarding what she told Deanna. We reiterate that Sidener lacked independent recall of the conversation and testified about only what she believed she would have told Deanna based upon her custom and medical notes. This lack of clarity is important in determining whether a genuine issue of material fact exists regarding what Deanna knew or had reason to know as a result of that conversation. Because the record does not clearly establish what Sidener told Deanna on May 1, 2020, and therefore what information Deanna had on that date, defendants have not met their burden of showing, free from doubt, that they are entitled to summary judgment as a matter of law.

¶ 77 We additionally reject defendants' argument that Deanna's affidavit was irrelevant to whether there existed a genuine issue of material fact. We agree that the standard for judging whether the discovery rules apply is measured from what a reasonable person should have known, not from what Deanna actually knew. Although we agree that Deanna's affidavit is not determinative of that issue, her affidavit is far from irrelevant. Defendants' own argument on this issue—that Deanna's affidavit seeks to contradict the medical records—demonstrates precisely why there exists a question of fact for the jury to decide. The simple fact that Deanna remembers events differently supports our conclusion that a genuine issue of material fact exists.

¶ 78 Because a genuine issue of material fact existed regarding whether a reasonable person in Deanna's shoes knew or should have known on May 1, 2020, that her injury may have been wrongfully caused, summary judgment was improper.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated, the judgment of the trial court is reversed.

¶ 81 Reversed and remanded.