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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CHRISTINA RUIZ,

Plaintiff and Appellant,

v.

CITY OF EL CENTRO,

Defendant and Respondent.

D058378

(Super. Ct. No. ECU04606)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffrey B. Jones, Judge. Affirmed.

This action arises out of plaintiff Christina Ruiz's claim that she fell in August 2007 at the El Centro Regional Medical Center (ECRMC), which is owned by the City of El Centro (the City), when a portion of her labor and delivery bed collapsed, resulting in an injury to her back.

The court granted summary judgment in favor of the City, finding that Ruiz's government tort claim presented on March 25, 2008, was untimely because prior to

September 25, 2007, she suffered appreciable injury that she suspected was because of the accident.

Ruiz appeals asserting (1) the court used the wrong standard in determining the date her claims accrued; (2) there was a question of fact as to whether there was delayed discovery; (3) there is no evidence she suffered more than nominal damage prior to September 25, 2007; and (4) she did not know the cause of her injuries until well after September 25, 2007. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Injury

On August 13, 2007, Ruiz was admitted to ECRMC for labor and delivery of her first child. According to Ruiz, as the anesthesiologist was preparing to place her epidural, the foot of her labor and delivery bed collapsed and she fell to the ground.

The fall was painful and Ruiz testified that she felt pain different from the pain of her contractions. Ruiz was upset about the fall and understood that it was not supposed to happen.

Ruiz's husband, Gabriel Hernandez Ruiz, learned on the day of the incident that there was a problem with the bed and that another patient had fallen from the same bed.

B. Ruiz's Pain and Knowledge of Its Cause

Ruiz suffered lower back pain every day from the day she was released from the hospital on August 14, 2007, until she saw her physician on September 25, 2007. The pain gradually worsened and radiated down her right leg. She began experiencing right leg pain two or three days after the fall.

When she was released from the hospital, Ruiz's physician prescribed medicine for her back pain. She took Tylenol with Codeine two to three times a day. It hurt when she sat for a long period of time, when she was on her feet for a long period of time, and even when she was lying down. The back pain interfered with her activities of daily living.

Before she saw her doctor on September 25, 2007, Ruiz "thought it was a possibility" her back pain could have been related to the fall. Before she saw her doctor on September 25, 2007, she "didn't think of anything" other than the fall that could be the cause of the back pain.

At her doctor's appointment on September 25, 2007, Ruiz's chief complaint was back pain. She asked her doctor if her pain could be related to the fall. Her physician thought it likely could be.

Ruiz's doctor referred her to a spine clinic and sent her for an X-ray. In March 2008 an MRI revealed she had a herniated disc in her lower back.

C. Ruiz's Claim with the City

ECRMC is a public entity, as defined in Government Code section 811.2 (all further undesignated statutory references are to the Government Code), and is owned by the City.

On March 25, 2008, Ruiz submitted a claim to the City for the back injury resulting from the fall. Ruiz claimed the City or its employees were negligent in failing to properly inspect, maintain and/or repair the bed. She claimed her injuries from the fall included a herniated disc at L4/S1, impinging on the right nerve root, which caused pain, dysfunction, impaired mobility and emotional distress.

On April 3, 2008, The City denied Ruiz's claim as untimely because it was not presented within six months of the accrual of her cause of action, as required by sections 901 and 911.2. The City also advised Ruiz that she could apply for leave to present a late claim.

D. Ruiz Files Suit

Rather than submitting an application for leave to present a late claim, Ruiz and her husband filed a lawsuit against the City for negligence and loss of consortium.¹

E. The City's First Motion for Summary Judgment

The City filed a motion for summary judgment, asserting that Ruiz failed to timely file a claim under the Tort Claims Act. However, rather than ruling on the merits of the motion, the court found the complaint failed to state a cause of action because the allegations of the complaint did not correspond with the claim presented to the City. The court deemed the motion as a motion for judgment on the pleadings and granted the motion with leave to amend.

F. Ruiz's First Amended Complaint

Thereafter, Ruiz filed a first amended complaint which incorporated the language of her claim that the City or its employees were negligent in failing to properly inspect, maintain and/or repair the labor/delivery bed.

¹ Mr. Ruiz is not a party to this appeal. The parties stipulated to dismiss his claim without prejudice to facilitate this appeal.

G. The City's Second Motion for Summary Judgment

The City filed a second motion for summary judgment, again asserting that Ruiz had failed to present her claim to the City within six months of the accrual of her cause of action. The City argued that Ruiz's claim accrued as early as August 13, 2007, the date of the incident, but earlier than September 25, 2007, because by that time she knew she was injured and that it could have been caused by the fall. The City recited Ruiz's admissions that she suffered pain from the date of the incident forward, which worsened over time, limited her activities of daily living, and required daily pain medication. The City argued that Ruiz admitted she suspected that her back pain was caused by the fall prior to September 25, 2007. The City also argued that the fact Ruiz later learned of the extent of her injuries did not toll the accrual date of her claim. The City in addition argued her failure to seek leave to file a late claim foreclosed her from seeking such relief from the court.

In opposing the motion, Ruiz argued that triable issues of fact existed as to when her claim accrued and that she did not suffer "appreciable" harm until an MRI revealed a herniated disc. She asserted that her cause of action accrued at, the earliest on September 25, 2007, when she visited her physician because she had suffered only nominal injury until that time. She also asserted it was disputed whether that there was even a fall, based upon the testimony of the anesthesiologist who witnessed the incident and minimized the severity of what occurred.

H. *Court's Ruling*

The court granted the City's motion for summary judgment, finding that Ruiz's complaint was time-barred because her cause of action accrued prior to September 25, 2007. The court first rejected that there was any dispute that she actually fell to the floor based upon the allegations in her complaints, her interrogatory responses, and deposition testimony. The court made the following findings concerning the Ruiz's claim being time-barred:

"Plaintiffs do not dispute that the bed malfunctioned, that [she] was aware of the malfunction, that the malfunction caused some physical impact to her body, that she felt immediate and different pain, that she felt back pain from the time she left the hospital until September 25, 2007, that she suspected the pain was due to injury caused by the malfunctioning bed, and that she could think of no other cause of the pain."

This timely appeal follows.

DISCUSSION

I. *STANDARDS GOVERNING MOTIONS FOR SUMMARY JUDGMENT*

The summary judgment procedure is directed at revealing whether there is evidence that requires the fact-weighting procedure of a trial. "[T]he trial court in ruling on a motion for summary judgment is merely to determine whether such issues of fact exist, and not to decide the merits of the issues themselves.' [Citation.] The trial judge determines whether triable issues of fact exist by reviewing the affidavits and evidence before him or her and the reasonable inferences which may be drawn from those facts." (*Morgan v. Fuji Country USA, Inc.* (1995) 34 Cal.App.4th 127, 131.) However, a

material issue of fact may not be resolved based on inferences if contradicted by other inferences or evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856.)

"The evidence of the moving party [is] strictly construed, and that of the opponent liberally construed, and any doubts as to the propriety of granting the motion [are to] be resolved in favor of the party opposing the motion." (*Branco v. Kearny Moto Park, Inc.* (1995) 37 Cal.App.4th 184, 189.) The trial court does not weigh the evidence and inferences, but instead merely determines whether a reasonable trier of fact could find in favor of the party opposing the motion, and must deny the motion when there is some evidence that, if believed, would support judgment in favor of the nonmoving party.

(*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 139.)

Consequently, summary judgment should be granted only when a moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

Because a motion for summary judgment raises only questions of law, we independently review the parties' supporting and opposing papers and apply the same standard as the trial court to determine whether there exists a triable issue of material fact. (*City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 582; *Southern Cal. Rapid Transit Dist. v. Superior Court* (1994) 30 Cal.App.4th 713, 723.) In practical effect, we assume the role of a trial court and apply the same rules and standards governing a trial court's determination of a motion for summary judgment. (*Lopez v. University Partners* (1997) 54 Cal.App.4th 1117, 1121-1122.) We liberally construe the evidence in support of the party opposing summary judgment (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142) and assess whether the evidence

would, if credited, permit the trier of fact to find in favor of the party opposing summary judgment under the applicable legal standards. (Cf. *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 850.)

II. ANALYSIS

Under the Tort Claims Act a person may not sue a public entity for personal injury or wrongful death unless he or she first presented a written claim to the public entity within six months following the accrual of the claim and the public entity rejected the claim. (§§ 911.2, 945.4; *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.)

The timeliness of a claim is governed by statute. The date of the accrual of the cause of action is defined by section 901: the action would "be deemed to have accrued within the meaning of the statute of limitations which would be applicable [but for the] requirement that a claim be presented" Since the underlying action was for medical negligence, Code of Civil Procedure section 340.5 governs. For a claim against a medical provider for negligence, "the time for the commencement of action shall be three years after the date of injury or *one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.*" (Code Civ. Proc., § 340.5, italics added.)

In *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111 (*Jolly*), the court enunciated the discovery rule: "[T]he statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing . . . once the plaintiff has ""notice or information of circumstances to put a reasonable person on

inquiry. . . .'" [Citation.] A plaintiff need not be aware of the specific 'facts' necessary to establish the claim. . . . Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts." (Italics omitted, fn. omitted; see also *Knowles v. Superior Court* (2004) 118 Cal.App.4th 1290, 1295 ["[A] person need not *know* of the actual negligent cause of an injury; mere *suspicion* of negligence suffices to trigger the limitation period."].)

The *Jolly* court also stated in a footnote that the wrong the plaintiff needs to be aware of is not the legal sense of wrong, but the lay understanding of wrong. (See *Jolly, supra*, 44 Cal.3d. at p. 1110, fn. 7.) Knowledge of presumptive and actual facts will start the statutory period running and the plaintiff comes under a duty to investigate. (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 101.) "[W]hen the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation . . . the statute commences to run." (*Ibid.*, italics omitted.)

Application of these rules demonstrates that the court did not err in granting summary judgment in favor of the City because Ruiz was aware of her injury and suspected its cause prior to September 25, 2007. It is undisputed that (1) the bed malfunctioned; (2) she was aware that it malfunctioned; (3) the malfunction caused some physical impact to her body, (4) she felt immediate pain, different from her labor pain; (5) she felt back pain from the time she left the hospital until September 25, 2007; (6) she suspected the pain was due to injury caused by the malfunctioning bed; and (7) she could

think of no other cause of the pain. From the time she was discharged from the hospital, Ruiz took pain medications for her back on a daily basis. Shortly after leaving the hospital her pain increased and radiated down her right leg. Her back hurt every time she sat down or was on her feet for a long period of time, and even when she was lying down. The pain interfered with her daily activities.

Thus, Ruiz's contention on appeal that her injury was not significant enough to commence the limitations period prior to September 25, 2007, is not supported by these undisputed facts or the applicable law. "Appreciable" harm does not mean it must be substantial or fully diagnosed. The cause of action accrues when "there is some evident harm or detrimental effect." (*Marriage & Family Center v. Superior Court* (1991) 228 Cal.App.3d 1647, 1653-1654.) "It is the occurrence of some such cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations." (*Graham v. Hansen* (1982) 128 Cal.App.3d 965, 974, italics omitted.)

Thus, the court did not err in granting the City's motion for summary judgment.

DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

AARON, J.