

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 17, 2026 Session

FILED

09/30/2026

Clerk of the
Appellate Courts

KAREN BYRNE v. FLAVIUS DRAGILA, M.D., ET AL.

Appeal from the Circuit Court for Knox County
No. 2-114-19 William T. Ailor, Judge

No. E2025-00998-COA-R3-CV

In this health care liability action, the plaintiff asserted claims against multiple physicians and medical entities. The trial court ultimately granted summary judgment in favor of one of the defendants, Dr. Flavius Dragila, based on expiration of the one-year statute of limitations. The trial court also certified the judgment as final pursuant to Tennessee Rule of Civil Procedure 54.02. The plaintiff has appealed. Upon our review and viewing the evidence in the light most favorable to the plaintiff, we conclude that a genuine issue of material fact exists regarding when the plaintiff discovered, or in the exercise of reasonable diligence should have discovered, both (1) that she had been injured by wrongful or tortious conduct and (2) the identity of the person or persons whose wrongful conduct caused the injury. We therefore vacate the trial court's grant of summary judgment in favor of Dr. Dragila and remand this matter to the trial court for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Vacated; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which JOHN W. MCCLARTY, P.J., E.S., and WILLIAM E. PHILLIPS, II, J., joined.

Neil M. McIntire, Nashville, Tennessee, for the appellant, Karen Byrne.

Heidi A. Barcus and Hillary B. Jones, Knoxville, Tennessee, for the appellee, Flavius Dragila, M.D.

OPINION

I. Factual and Procedural History

On April 1, 2019, Karen Byrne and Timothy Byrne filed a health care liability action in the Knox County Circuit Court (“trial court”) against the University of Tennessee Medical Center (“UTMC”); Issam M. Almashharawi, M.D.; Joshua A. Earl, M.D.; and Stephan A. Leschak, M.D. The Byrnes averred that Ms. Byrne had presented at UTMC on November 24, 2017, with complaints of shortness of breath and chest pain. According to Ms. Byrne, she was initially diagnosed with suspected congestive heart failure and was administered Heparin, a blood thinner, as part of her treatment. Ms. Byrne spent the next several days in the hospital, undergoing various tests and procedures. The tests revealed a renal mass, which was subsequently biopsied after the administration of Heparin was paused.

Ms. Byrne averred that she then became critically ill and “suffered hypovolemic/hemorrhagic shock due to significant retroperitoneal and perinephric hemorrhage.” Ms. Byrne was admitted to the UTMC Intensive Care Unit (“ICU”) and remained there from December 3, 2017, to December 9, 2017. She was transferred from the ICU to Vanderbilt University Medical Center (“Vanderbilt”), where she stayed until December 29, 2017. Ms. Byrne was transferred from Vanderbilt to LifeCare of Old Hickory (“LifeCare”) for rehabilitation, and she was eventually discharged from LifeCare and allowed to return home. However, Ms. Byrne alleged that due to complications resulting from the defendants’ lack of appropriate care administered at UTMC, she continued to experience ongoing pain and suffering, loss of enjoyment of life, and medical expenses. Ms. Byrne asserted claims of medical negligence, lack of informed consent, and respondeat superior. Mr. Byrne asserted a claim for loss of Ms. Byrne’s companionship and consortium. Together, they sought damages in the amount of \$5,000,000.

On July 3, 2019, Dr. Almashharawi filed an answer to the complaint, denying all negligence and liability. Likewise, On July 10, 2019, UTMC filed an answer denying liability. Dr. Earl filed an answer the following day, wherein he also denied liability and asserted immunity by reason of his employment as a resident physician with UTMC pursuant to Tennessee Code Annotated § 9-8-307(h).

On July 12, 2019, the Byrnes filed a complaint in the trial court against University Physicians’ Association, Inc. (“UPA”), and Flavius Dragila, M.D., under a separate docket number.¹ This complaint was predicated on the same factual allegations with the added averment that Dr. Dragila, an employee of UPA, had also been involved in Ms. Byrne’s care at UTMC. According to the Byrnes, Dr. Dragila had ordered the second biopsy of Ms.

¹ The Byrnes’ action against Dr. Dragila and UPA was later consolidated with the original pending action against the other medical defendants by order of the trial court dated February 7, 2024.

Byrne's kidney. The Byrnes averred that Dr. Dragila had been negligent in the care he had rendered to Ms. Byrne, and they sought compensatory damages as relief.

On August 23, 2019, Dr. Dragila filed an answer denying liability and asserting various affirmative defenses, including expiration of the applicable statute of limitations. UPA filed a similar answer on the same day. On November 1, 2019, Dr. Dragila and UPA filed a joint motion for summary judgment, asserting that Dr. Dragila had last interacted with Ms. Byrne at UPMC on December 3, 2017, the day she was transferred to the ICU. Dr. Dragila averred that he had provided no further care for Ms. Byrne after December 3, 2017.

Dr. Dragila and UPA thus asserted that the Byrnes' claims against them were barred by the one-year statute of limitations inasmuch as the complaint had not been filed until July 12, 2019. These defendants further asserted that pursuant to Tennessee Code Annotated § 29-26-121(c), in order for the Byrnes to have availed themselves of the 120-day extension of the statute of limitations, they would have had to send a pre-suit notice letter prior to December 3, 2018, the date upon which the statute of limitations would have run. However, the pre-suit notice letters to Dr. Dragila and UPA were dated March 15, 2019. Accordingly, these defendants argued that the claims against them were untimely filed, and they attached copies of the pre-suit notice letters dated March 15, 2019. They also filed a statement of material facts in support of their motion.

Dr. Earl was dismissed from the lawsuit by agreed order dated February 4, 2020. On March 25, 2020, Dr. Leschak filed an answer, denying any negligence or liability. On April 28, 2020, the Byrnes filed a response in opposition to Dr. Dragila's and UPA's motion for summary judgment. The Byrnes also filed a statement of material facts and affidavits in support.

Meanwhile, on April 28, 2020, the trial court entered an order recognizing the Tennessee Supreme Court's entry of an order suspending in-person court proceedings due to the COVID-19 pandemic. Accordingly, the trial court ordered that the current hearing date regarding summary judgment would be cancelled and that the court would decide the pending motion pursuant to Local Rule VII. The court directed the parties to file responsive pleadings and proposed findings and conclusions by June 1, 2020.

On August 7, 2020, Dr. Almashharawi filed a motion for summary judgment along with a statement of undisputed material facts. The Byrnes filed a response in opposition to Dr. Almashharawi's motion and a response challenging the statement of undisputed facts. On September 22, 2020, the trial court entered an order denying Dr. Dragila's and UPA's joint motion for summary judgment, finding that a disputed issue of material fact existed concerning when the Byrnes knew or should have known of Ms. Byrne's injury.

UPA filed a second motion for summary judgment on April 23, 2021, asserting that Dr. Dragila was not a UPA employee and that UPA neither contracted with him nor controlled, directed, or supervised his care of patients. UPA thus asserted that it maintained no vicarious liability for Dr. Dragila's actions. UPA attached a statement of undisputed material facts and an affidavit from its Chief Executive Officer in support.

On July 26, 2021, the trial court entered an order granting summary judgment in favor of UPA. The court noted in the order that the Byrnes had failed to file a response to the summary judgment motion or the statement of undisputed material facts. The court thus deemed the facts as stated by UPA admitted and found that UPA had negated an essential element of the Byrnes' claims against it pursuant to *Brennan v. Goble*, No. E2020-00671-COA-R3-CV, 2021 WL 2156443 (Tenn. Ct. App. May 27, 2021) (determining that a court may consider statements of fact filed with a summary judgment motion as admitted when the nonmoving party fails to file a response in opposition thereto). Other defendants subsequently filed summary judgment motions as well.

On September 29, 2023, the trial court entered an order granting summary judgment in favor of Dr. Almashharawi. On October 10, 2023, the trial court entered an order dismissing Mr. Byrne's claims, predicated on the fact that Mr. Byrne had passed away and that no motion for substitution had been filed for more than ninety days following his death.

Dr. Dragila filed a second motion for summary judgment on September 20, 2024. Dr. Dragila again argued that the statute of limitations barred Ms. Byrne's claims against him. Dr. Dragila attached a statement of undisputed material facts, a portion of Ms. Byrne's medical records, and affidavits executed by the Byrnes and their counsel. Ms. Byrne filed a response, arguing that she did not discover Dr. Dragila's alleged negligence until April 2018, thus rendering her March 2019 pre-suit notice timely.

On June 6, 2025, the trial court entered an order granting Dr. Dragila's motion for summary judgment. In its order, the trial court explained:

1. Mrs. Byrne, Plaintiff, was last treated by Dr. Dragila on December 3, 2017.
2. The Byrnes filed their Complaint against Dr. Dragila on July 12, 2019.
3. The statute of limitations in this matter began to run in February of 2018 and, accordingly, is time-barred.
4. The question of when a plaintiff is put on notice of a claim is [] an objective standard. Daffron v. Memorial Health Care Sys., 605 S.W.3d 11 (Tenn. Ct. App. 2019).

5. A plaintiff's subjective reactions are not controlling of whether the statute of limitations should be tolled under the discovery rule. Id.
6. Under the discovery rule, a claim accrues, and the statute of limitations begins to run, when the plaintiff discovers that he or she has been injured by wrongful or tortious conduct and the identity of the person or persons whose wrongful conduct caused the injury. Woodruff v. Walker, 542 S.W. 2d 486 (Tenn. Ct. App. 2017).
7. The discovery rule does not permit a plaintiff to delay the filing of their complaint until they know the full extent of the damages, the specific type of legal claim they have, or all of the facts that affect the merits of the claim. Id.
8. Neither actual knowledge that the relevant standard of care was breached, nor diagnosis of the injury by another medical professional, is a prerequisite to the accrual of a healthcare liability act. Sherrill v. Souder, 325 S.W.3d 584 (Tenn. 2010).
9. The statute of limitations begins to run once the plaintiff has information sufficient to alert a reasonable person of the need to investigate the injury. Woodruff v. Walker.
10. According to the Affidavits of the Plaintiffs, February 2018 was the first time they became aware or concerned that something had occurred at the University of Tennessee Medical Center that [had] caused Mrs. Byrne injury due to potential negligence. This is when the Byrnes had information sufficient to alert them of the need to investigate. The fact that they went to two (2) different attorneys is immaterial. The fact that in June of 2018, the Plaintiffs went to a North Carolina physician, who told them that they may have a cause of action, is immaterial.
11. The statute of limitations in this matter began to run in February of 2018. Therefore, the lawsuit filed against Dr. Dragila, on July 12, 2019, was filed outside of the applicable statute of limitations, based on the undisputed material facts in the record.

The trial court therefore dismissed Ms. Byrne's claims against Dr. Dragila with prejudice. The court found that the order would have no effect upon Ms. Byrne's claims against Dr. Leschak or UTMC and directed entry of a final judgment in favor of Dr. Dragila pursuant to Tennessee Rule of Civil Procedure 54.02. Ms. Byrne timely appealed.

II. Issues Presented

Ms. Byrne presents the following issues for our review, which we have restated slightly:

1. Whether the trial court erred in determining that the statute of limitations concerning Ms. Byrne's cause of action against Dr. Dragila began to run in February 2018.
2. Whether the trial court erred in granting summary judgment because a genuine issue of material fact existed regarding when Ms. Byrne first became aware of Dr. Dragila's negligence.

III. Standard of Review

The grant or denial of a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness. *See Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015); *Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013) (citing *Kinsler v. Berkline, LLC*, 320 S.W.3d 796, 799 (Tenn. 2010)). As such, this Court must "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250. As our Supreme Court has explained concerning the requirements for a movant to prevail on a motion for summary judgment pursuant to Tennessee Rule of Civil Procedure 56:

[W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. "Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record." *Id.* When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and

by affidavits or one of the other means provided in Tennessee Rule 56, “set forth specific facts” *at the summary judgment stage* “showing that there is a genuine issue for trial.” Tenn. R. Civ. P. 56.06. The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. [v. Zenith Radio Corp.]*, 475 U.S. [574,] 586, 106 S. Ct. 1348 [(1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye, 477 S.W.3d at 264-65. Pursuant to Tennessee Rule of Civil Procedure 56.04, the trial court must “state the legal grounds upon which the court denies or grants the motion” for summary judgment, and our Supreme Court has instructed that the trial court must state these grounds “before it invites or requests the prevailing party to draft a proposed order.” See *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014). “Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, [t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 265).

IV. Statute of Limitations and Discovery Rule

Tennessee Code Annotated § 29-26-116 (West April 23, 2012, to current) provides in pertinent part:

- (a)(1) The statute of limitations in health care liability actions shall be one (1) year as set forth in § 28-3-104.
- (2) In the event the alleged injury is not discovered within such one-year period, the period of limitation shall be one (1) year from the date of such discovery.

In addition, Tennessee Code Annotated § 29-26-121 (West April 24, 2015, to current) specifies that pre-suit notice shall be sent to provider defendants at least sixty days before the filing of a health care liability complaint. If proper pre-suit notice is timely sent, “the applicable statutes of limitations and repose shall be extended for a period of one hundred twenty (120) days from the date of expiration of the statute of limitations and statute of repose applicable to that provider.” *See* Tenn. Code Ann. § 29-26-121(c).

In this action, the trial court determined that the statute of limitations concerning Ms. Byrne’s claims against Dr. Dragila began to run in February 2018 by operation of the discovery rule.² *See* Tenn. Code Ann. § 29-26-116(a)(2). According to the court, “February 2018 was the first time [the plaintiffs] became aware or concerned that something had occurred at [UTMC] that caused Mrs. Byrne injury due to potential negligence. This is when [the plaintiffs] had information sufficient to alert them of the need to investigate.” Ms. Byrne takes issue with that finding, arguing that the facts presented to the trial court contradict the February 2018 discovery date. Following our thorough review of the evidence in the record, we agree with Ms. Byrne.

Regarding operation of the discovery rule, our Supreme Court has clarified:

[A] medical malpractice cause of action accrues when one discovers, or in the exercise of reasonable diligence should have discovered, both (1) that he or she has been injured by wrongful or tortious conduct and (2) the identity of the person or persons whose wrongful conduct caused the injury. A claimant need not actually know of the commission of a wrongful action in order for the limitations period to begin, but need only be aware of facts sufficient to place a reasonable person on notice that the injury was the result of the wrongful conduct of another. If enough information exists for discovery of the wrongful act through reasonable care and diligence, then the cause of action accrues and the tolling of the limitations period ceases. Neither actual knowledge of a breach of the relevant legal standard nor diagnosis of the injury by another medical professional is a prerequisite to the accrual of a medical malpractice cause of action.

² Dr. Dragila argues that the discovery rule is inapplicable here and that because he last treated Ms. Byrne on December 3, 2017, the statute of limitations concerning her health care liability claim would have run on December 3, 2018. However, because Dr. Dragila failed to raise this as an issue in the statement of issues contained in his appellate brief, we deem the issue waived. *See Champion v. CLC of Dyersburg, LLC*, 359 S.W.3d 161, 163 (Tenn. Ct. App. 2011). The only issue properly raised in Dr. Dragila’s brief asks this Court to conclude that the trial court correctly determined that the statute of limitations began to run in February 2018 based on application of the discovery rule.

Sherrill v. Souder, 325 S.W.3d 584, 595 (Tenn. 2010). Accordingly, the standard is an objective one. *Daffron v. Mem'l Health Care Sys., Inc.*, 605 S.W.3d 11, 23 (Tenn. Ct. App. 2019) (“Plaintiffs’ subjective reactions are not controlling of whether the statute of limitations should be tolled under the discovery rule.” (quoting *Burk v. RHA/Sullivan, Inc.*, 220 S.W.3d 896, 902 (Tenn. Ct. App. 2006))).

Here, both Mr. Byrne and Ms. Byrne filed affidavits during the trial court proceedings concerning their first suspicion that Ms. Byrne might have been the victim of medical negligence. Both plaintiffs related that no one at UTMC had told them that Ms. Byrne’s loss of blood during that hospitalization was “anything other than a normal complication.” Furthermore, both plaintiffs stated that during Ms. Byrne’s hospitalizations, they were “very focused on getting her better so she could go home as soon as possible.”

Ms. Byrne stated in her affidavit that she was released from LifeCare to return home “in late February or early March 2018.” She further reported:

The first time I remember either my husband or me becoming aware or concerned that someone at UTMC may have done something wrong was not until several weeks after I returned home from LifeCare. When we returned home, we began talking about the initial treatments I had received at UTMC, and my husband decided to request the medical records from UTMC. We received those records sometime in April 2018.

(Emphasis added and paragraph numbering omitted.) Ms. Byrne also specified:

The earliest I knew of any issue related to my hospitalization and complication at UTMC that gave me any concern or pause was several weeks after I returned home to Knoxville from the rehabilitation center in early March 2018 and my husband and I started discussing what had occurred. I simply had no suspicion or concern until then that any providers at the hospital had been negligent or that anything that had been done was wrong.

(Emphasis added.)

Similarly, Mr. Byrne stated in his affidavit that Ms. Byrne had been released from LifeCare and had returned home in late February or early March 2018. He further related that the “first time my wife or I became aware or concerned that someone at UTMC might have done something wrong was several weeks after she returned home from LifeCare.” He explained: “When we returned home, we began talking about the initial treatments she had received at UTMC, and I decided to request the medical records from UTMC out of curiosity.” Accordingly, Mr. Byrne similarly concluded that the “earliest I appreciated any issue related to my wife’s hospitalization and complication at UTMC that gave me any

concern or pause was several weeks after we returned home to Knoxville from the rehabilitation center in early March 2018[.]”

With respect to the proper review of a grant of summary judgment, our Supreme Court has instructed:

Orders granting a summary judgment are not entitled to a presumption of correctness on appeal. Thus, appellate courts reviewing an order granting a summary judgment must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. The reviewing court must consider the evidence in the light most favorable to the non-moving party and must resolve all reasonable inferences in the non-moving party’s favor.

B & B Enters. of Wilson Cnty., LLC v. City of Lebanon, 318 S.W.3d 839, 845 (Tenn. 2010) (internal citations omitted).

Viewing the Byrnes’ affidavits in the light most favorable to them, we conclude that the evidence does not support the trial court’s determination that “February 2018 was the first time [the plaintiffs] became aware or concerned that something had occurred at [UTMC] that caused Mrs. Byrne injury due to potential negligence” or that February 2018 was “when [the plaintiffs] had information sufficient to alert them of the need to investigate.” Both plaintiffs’ affidavits state that Ms. Byrne returned home in “late February or early March 2018” and that “several weeks” thereafter, the Byrnes began to discuss her care, became concerned, and decided to order a copy of her medical records from UTMC to investigate. The Byrnes related that they received a copy of at least a portion of the UTMC records in April 2018. After consulting with attorneys, retaining counsel, and filing suit against the original defendants, the Byrnes sent pre-suit notice letters to Dr. Dragila and UPA on March 15, 2019.

The critical question thus becomes whether the March 15, 2019 pre-suit notice was sent within one year of the date that the plaintiffs discovered, or in the exercise of reasonable diligence should have discovered, both (1) that Ms. Byrne had been injured by wrongful or tortious conduct and (2) the identity of the person or persons whose wrongful conduct caused the injury. *See Sherrill*, 325 S.W.3d at 595. If so, the plaintiffs could properly avail themselves of the 120-day extension of the statute of limitations provided by Tennessee Code Annotated § 29-26-121(c), and their July 12, 2019 complaint was timely.

Although the evidence in the record does not support the trial court’s finding that the plaintiffs discovered, or in the exercise of reasonable diligence should have discovered, that Ms. Byrne was the victim of negligent medical treatment as early as February 2018, the evidence is not conclusive regarding precisely when the plaintiffs reasonably should have known both the existence of an injury and the identity of the persons who caused it.

We reiterate the Byrnes' statements in their affidavits that until Ms. Byrne was able to return home from her various hospitalizations, which occurred in "late February or early March 2018," they were both focused on her recovery and release. Accordingly, the Byrnes reported that it was not until "several weeks after [Ms. Byrne] returned home from LifeCare" that they began to become "aware or concerned that someone at UTMC might have done something wrong" and began to investigate. Mr. Byrne stated that he then requested the UTMC records and that those records were received by them "sometime in April 2018."

Ms. Byrne's UTMC records reveal several notable facts, including, as summarized here:

- (1) multiple conditions or comorbidities were noted in Ms. Byrne's UTMC records, including diabetes, hypothyroidism, chronic kidney disease, pulmonary emboli, hypertension, hypoxia, and a left renal mass that was suspicious for malignancy;
- (2) Ms. Byrne was administered Heparin, a blood thinner, to treat the pulmonary emboli;
- (3) Ms. Byrne underwent two biopsies of the mass on her left kidney;
- (4) Ms. Byrne subsequently experienced "sudden onset sharp left flank pain";
- (5) a CT scan revealed that Ms. Byrne had a "retroperitoneal bleed originating from the left kidney" and Ms. Byrne was transferred to critical care after she experienced hemorrhagic shock; and
- (6) Dr. Dragila was the hospitalist treating Ms. Byrne when the above-listed events occurred.

The Byrnes' affidavits indicate that when these events were occurring, they were not given any information and had no reason to suspect that Ms. Byrne's loss of blood was "anything other than a normal complication."

In addition, Dr. Dragila's statement of undisputed facts, filed in support of his motion for summary judgment, contains the following statement:

In March 2018, Mrs. Byrne and her husband "began talking about the initial treatments she had received at UTMC," and Mr. Byrne decided to request his wife's medical records from UTMC, "out of curiosity."

In her response to Dr. Dragila's statement of undisputed facts, Ms. Byrne agreed that the above-quoted statement was true.

Predicated on these facts established in the record, it appears that the earliest date the Byrnes began to suspect that some malpractice might have occurred at UTMC was "March 2018." However, without a more specific date, we are unable to discern whether the March 15, 2019 pre-suit notice was sent within one year of the date that the plaintiffs discovered, or in the exercise of reasonable diligence should have discovered, both (1) that Ms. Byrne had been injured by wrongful or tortious conduct and (2) the identity of the person or persons whose wrongful conduct caused the injury. *See Sherrill*, 325 S.W.3d at 595.

In *Sherrill*, when confronted with the issue of when the plaintiff had received "information [] sufficient to have placed a reasonable person on notice that the injury was the result of [the defendant physician's] conduct, such that his wrongful action could have been discovered through reasonable care and diligence," *see id.* at 598, our Supreme Court explained:

The procedural status of this case is of particular relevance given the issue before us, because "[w]hether the plaintiff exercised reasonable care and diligence in discovering the injury or wrong is usually a question of fact." *Shadrick v. Coker*, 963 S.W.2d [726,] 737 [(Tenn. 1998)] (quoting *Wyatt v. A-Best Co.*, 910 S.W.2d 851, 854 (Tenn. 1995)); *see also McIntosh v. Blanton*, 164 S.W.3d 584, 586 (Tenn. Ct. App. 2004) ("The determination of when a reasonable person should know that his injury was caused by some wrongful or negligent act is generally a question for the trier of fact."). Indeed, our Court of Appeals has stated that "where the resolution of the issue depends upon the question of whether due diligence was exercised under the circumstances, and where differing inferences might reasonably be drawn from the uncontroverted facts, the issue is not appropriate for summary judgment." *Hathaway v. Middle Tenn. Anesthesiology, P.C.*, 724 S.W.2d 355, 360 (Tenn. Ct. App. 1986). Similarly, courts in other jurisdictions have determined that the fact-dependent nature of the discovery rule's application makes it an unlikely candidate for disposition on summary judgment in both medical malpractice cases, *see Walk v. Ring*, 202 Ariz. 310, 44 P.3d 990, 996 (2002) ("[S]ummary judgment is warranted only if the [plaintiff's] failure to go forward and investigate is not reasonably justified."), and other contexts, *see Soutiere v. Betzdearborn, Inc.*, 189 F. Supp. 2d 183, 191 (D. Vt. 2002) (stating in toxic tort case that "[o]nly if reasonable minds cannot differ on the question of knowledge should the issue be determined as a matter of law"). Nevertheless, we may affirm the grant of summary judgment if the facts in the record and all reasonable inferences

demonstrate that [the plaintiff's] cause of action accrued on or prior to [one year before the complaint's filing].

Id. at 596-98.

This Court has likewise recognized that summary judgment may be an inappropriate vehicle for determining the objective question of when a health care liability plaintiff possessed information sufficient to trigger accrual of the statute of limitations. For example, in *Young ex rel. Young v. Kennedy*, 429 S.W.3d 536 (Tenn. Ct. App. 2013), this Court elucidated:

Usually, the determination of when a plaintiff had constructive knowledge of facts sufficient to put him or her on notice pursuant to the discovery rule “is . . . a question for the trier of fact.” *McIntosh v. Blanton*, 164 S.W.3d 584, 586 (Tenn. Ct. App. 2004). However:

[W]here the undisputed facts demonstrate that no reasonable trier of fact could conclude that a plaintiff did not know, or in the exercise of reasonable care and diligence should not have known, that he or she was injured as a result of the defendant's wrongful conduct, Tennessee case law has established that judgment on the pleadings or dismissal of the complaint is appropriate.

Schmank v. Sonic Automotive, Inc., No. E2007-01857-COA-R3-CV, 2008 WL 2078076, at *3 (Tenn. Ct. App. May 16, 2008).

Id. at 557-58. *See Hathaway v. Middle Tenn. Anesthesiology, P.C.*, 724 S.W.2d 355, 360 (Tenn. Ct. App. 1986) (explaining that when applying the discovery rule, “where the resolution of the issue depends upon the question of whether due diligence was exercised under the circumstances, and where differing inferences might reasonably be drawn from the uncontroverted facts, the issue is not appropriate for summary judgment”); *Lott v. Mallett*, No. W2020-01233-COA-R3-CV, 2022 WL 894755, at *10 (Tenn. Ct. App. Mar. 25, 2022) (explaining that “the question of whether a plaintiff had constructive notice is often an issue of fact for the trier of fact” unless there are undisputed facts that demonstrate that “no reasonable trier of fact could conclude that a plaintiff did not know, or in the exercise of reasonable care and diligence should not have known, that he or she was injured as a result of the defendant's wrongful conduct” (quoting *Young*, 429 S.W.3d at 557)).

Here, viewing the evidence in the light most favorable to Ms. Byrne, we conclude that a genuine issue of material fact exists regarding when Ms. Byrne discovered, or in the exercise of reasonable diligence should have discovered, both (1) that she had been injured by wrongful or tortious conduct and (2) the identity of the person or persons whose

wrongful conduct caused the injury. *See Sherrill*, 325 S.W.3d at 595. Based on the facts presented, a reasonable trier of fact could conclude that Ms. Byrne did not know, or in the exercise of reasonable care and diligence might not have known, that she had been injured as a result of Dr. Dragila's wrongful conduct until after March 15, 2018. *See Young*, 429 S.W.3d at 557. Accordingly, the trial court's grant of summary judgment concerning this issue was inappropriate.

V. Conclusion

For the foregoing reasons, we conclude that the trial court's grant of summary judgment to Dr. Dragila must be vacated. We remand this matter to the trial court for further proceedings. Costs on appeal are assessed to the appellee, Flavius Dragila, M.D.

s/Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE