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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

February 11, 2026 Session

**BFI WASTE SERVICES, LLC, ET AL. v. RECOVERY ASSOCIATES
GROUP, LLC, ET AL.**

**Appeal from the Circuit Court for Shelby County
No. CT-3119-24 Karen R. Williams, Judge**

No. W2025-01046-COA-R9-CV

In this interlocutory appeal, two of the defendants appeal the trial court's denial of their motion to dismiss for the plaintiffs' failure to comply with the pre-suit notice and good faith certificate requirements of the Tennessee Health Care Liability Act. We affirm the decision of the trial court and remand for further proceedings.

**Tenn. R. App. P. 9 Interlocutory Appeal by Permission; Judgment of the Circuit
Court Affirmed and Remanded**

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and W. MARK WARD, SP. J., joined.

Robert A. Talley, Memphis, Tennessee, for the appellants, Recovery Associates Group, LLC n/k/a Recovery Associates Group at Southwind, PLLC, and Scherri Nicole Henderson, LPC.

Donald Capparella, Nashville, Tennessee, for the appellees, BFI Waste Services, LLC, Indemnity Insurance Company of North America, and Cannon Cochran Management Services Company.

John C. Ryland, Memphis, Tennessee, for the appellees, The Psychiatry Group, PLLC, and Eric L. Smith, M.D.¹

OPINION

I. FACTS & PROCEDURAL HISTORY

¹ Neither The Psychiatry Group, PLLC, nor Dr. Smith filed an appellee's brief. Neither party has otherwise participated in this appeal.

This case arises from the provision of workers' compensation benefits. An employee of BFI Waste Services, LLC, was the victim of an attempted robbery while at work.² During the altercation, the employee shot the robber in self-defense, and the robber eventually died. As a result of this traumatic event, the employee received medical and counseling services from Recovery Associates Group, LLC, and The Psychiatry Group, PLLC.³ Scherri Henderson, LPC, is the owner and operator of Recovery Associates Group, and Eric Smith, M.D., is the owner and operator of The Psychiatry Group.

On July 25, 2024, BFI Waste Services, its workers' compensation benefits provider, Indemnity Insurance Company of North America, and the national third-party administrator for the employee's workers' compensation claims, Cannon Cochran Management Services Company, filed a lawsuit against Ms. Henderson, Recovery Associates Group, Dr. Smith, and The Psychiatry Group. The complaint asserted claims based on common law fraud, intentional misrepresentation, and unjust enrichment.⁴ The complaint contained the following allegations supporting the count of common law fraud:

The Defendants intentionally and knowingly made false and fraudulent statements of material fact to the Plaintiffs and concealed material facts from the Plaintiffs in the course of their submission of fraudulent charges seeking payment for Fraudulent Services.

The false and fraudulent statements of material fact and acts of fraudulent concealment including representations that the Fraudulent Services were legally performed by an appropriately licensed provider, were medically necessary, when in fact they were not, the engagement of pre-determined fraudulent treatment and billing protocol designed solely to financially enrich the Defendants, and representations that the fraudulent services provided were in compliance with the laws and regulations, when in fact they were not, constitute fraudulent conduct.

The Defendants intentionally made the above-referenced false and fraudulent statements and concealed material facts in a calculated effort to induce the Plaintiffs to pay charges that were not compensable under Tennessee law.

The Plaintiffs justifiably relied on these facts, fraudulent representations and acts of fraudulent concealment, and as a proximate result ha[ve] been injured

² The employee is not a party to this litigation. We refer to him as "the employee" for privacy reasons and intend no disrespect.

³ Recovery Associates Group, LLC, is now known as Recovery Associates Group at Southwind, PLLC.

⁴ Notably, intentional misrepresentation and fraud are merely "different names for the same cause of action." *Hodge v. Craig*, 382 S.W.3d 325, 342 (Tenn. 2012).

in [their] business by the fraudulent invoices, bills, other documents, and demands for payment the Defendants submitted.

Further, the complaint alleged that the defendants submitted bills for services that had never been rendered. The complaint stated that the plaintiffs had surveilled the employee, and the “surveillance taken . . . directly conflict[ed] with the Defendants’ medical records and billing for in-person and face-to-face services.” The complaint asserted that this surveillance demonstrated the employee “was not physically present at the Defendants’ offices in order to obtain” services for which the defendants submitted bills. Likewise, the complaint alleged that these “overt, intentional[,] and egregious acts of fraud” occurred when the defendants “intentionally submitted for billing psychiatric procedures that were never performed[.]” Additionally, the complaint contained the following allegations supporting the claim of intentional misrepresentation:

The Defendants knowingly submitted false, untruthful, fraudulent and misleading billing, treatment and testing records in which the Defendants, among other misrepresentations:

- i. Falsely represented that services were medically necessary and reasonable for the treatment of the patient insured.
- ii. Knowing[ly] performed services in such a matter as to misrepresent the clinical condition of the patient insured.
- iii. Knowingly performed services below acceptable standards of care.
- iv. Knowingly used patterns of boilerplate language in medical reports as to induce excessive and repetitive medical treatment.

The Defendants’ actions were undertaken for the purpose of defrauding the Plaintiffs by the submission of false, fraudulent and misleading claims for the payment of workers’ compensation benefits.

The complaint contained the following allegations supporting the claim of unjust enrichment:

The Defendants have submitted, and continue to submit, bills and demands for payment to the Plaintiffs for services allegedly and fraudulently rendered.

Acting in good faith, the Plaintiffs received documentation for services rendered and otherwise reimbursed the Defendants for medical services evidenced on the bills submitted for reimbursement.

The plaintiffs sought compensatory damages for the payments remitted for services that

were performed pursuant to the fraudulent bases set forth in the complaint.⁵

Subsequently, Ms. Henderson and Recovery Associates Group filed a motion to dismiss the complaint.⁶ They maintained that the plaintiffs had failed to comply with the provisions of the Tennessee Health Care Liability Act (“the THCLA”) by not submitting pre-suit notice at least 60 days before filing the lawsuit and by failing to file a certificate of good faith in conjunction with the complaint. *See* Tenn. Code Ann. §§ 29-26-121(a) and 29-26-122(a). The plaintiffs filed a response in which they acknowledged that Ms. Henderson and Recovery Associates Group were health care providers. They also acknowledged that they had not provided pre-suit notice or submitted a certificate of good faith. However, the plaintiffs argued that they were not required to comply with the provisions of the THCLA because the complaint did not set forth a health care liability action. Rather, they claimed that the complaint set forth “an intentional fraud case,” and they “had no duty to comply with the” requirements of the THCLA.

The trial court entered an order denying in part and granting in part the motion to dismiss on June 20, 2025. The court held that “all the issues that appear[ed] to be properly pled toward the issue of fraud” survived the motion to dismiss. However, the trial court also determined that certain claims constituted health care liability actions and stated “those claims [were] barred.” Subsequently, Ms. Henderson and Recovery Associates Group filed an application for permission to appeal. *See* Tenn. R. App. P. 9. That application was ultimately granted by this Court.

II. ISSUES PRESENTED

This Court, in its order granting Rule 9 review, limited the issues to the following:

1. Did the trial court err in concluding that this matter is not a “health care liability action” governed by the Tennessee Health Care Liability Act?
2. If so, did the trial court err in denying the defendants’ motion to dismiss based on noncompliance with Tennessee Code Annotated section 29-26-121 and/or -122?

For the following reasons, the judgment of the circuit court is affirmed.

III. DISCUSSION

The motion to dismiss did not specify that it was based on failure to state a claim pursuant to Tennessee Rule of Civil Procedure 12.02(6). However, our Tennessee

⁵ Notably, each cause of action included a paragraph incorporating the allegations contained “in all sections and subparts” of the complaint.

⁶ Neither Dr. Smith nor The Psychiatry Group joined the motion to dismiss. Rather, these defendants filed an answer denying the plaintiffs’ claims which included the affirmative defense of “fail[ure] to state a claim upon which relief may be granted.”

Supreme Court has previously explained that “[a] motion to dismiss for failure to state a claim is the proper method for challenging whether a plaintiff has complied with the THCLA’s pre-suit notice and certificate of good faith requirements.” *Ellithorpe v. Weismark*, 479 S.W.3d 818, 823 (Tenn. 2015). The trial court treated the motion to dismiss as one brought pursuant to Rule 12.02(6) as it did not consider materials outside of the pleadings. As we have previously explained, “[o]ur courts decide motions based on their substance ‘regardless of the rule referenced.’” *Ruff v. Vanderbilt Univ. Med. Ctr.*, No. M2022-01414-COA-R3-CV, 2024 WL 3159506, at *2 (Tenn. Ct. App. June 25, 2024), *perm. app. denied* (Tenn. Nov. 14, 2024) (quoting *Ferguson v. Brown*, 291 S.W.3d 381, 387 (Tenn. Ct. App. 2008)). Clearly, Ms. Henderson and Recovery Associates Group intended to file a motion to dismiss for failure to state a claim pursuant to Tennessee Rule of Civil Procedure 12.02(6), and the trial court appropriately treated the motion as such.

Accordingly, we apply the standard of review applied to motions to dismiss predicated on failure to state a claim. “A trial court’s grant of a motion to dismiss, filed pursuant to Tenn. R. Civ. P. 12.02(6), is a question of law, which we review *de novo* with no presumption of correctness.” *Hayward v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 680 S.W.3d 252, 259 (Tenn. Ct. App. 2023). Whether a plaintiff’s claims present a health care liability action “under the THCLA is a question of statutory interpretation,” and such issues are also “subject to *de novo* review.” *Igou v. Vanderbilt Univ.*, No. M2013-02837-COA-R3-CV, 2015 WL 1517794, at *3 (Tenn. Ct. App. Mar. 27, 2015). Notably, as with any instance of statutory interpretation, only if the language of the statute is determined to be ambiguous will we consider “the broader statutory scheme, legislative history, or other sources for clarity in meaning.” *Id.* Instead, we first look to the plain language of the statute, “and if it is unambiguous, we apply its plain meaning and look no further.” *Id.*

Ms. Henderson and Recovery Associates Group argue that “it is clear” the complaint presented only health care liability claims because it alleges they “violated standards of care in the treatment of a patient and that an injury resulted[.]” They note that Tennessee courts have interpreted the definition of a health care liability action broadly and maintain the claims raised in this case are encompassed within that definition. Conversely, the plaintiffs maintain that “[c]ases filed against health care providers regarding their business practices instead of their professional practices are not governed by the THCLA.” They argue that the complaint “only allege[d] fraud in Defendants’ billing practices” as there “are no claims of physical or mental injury regarding [the employee], related to the health care services allegedly provided[.]” While the plaintiffs assert that none of the allegations contained in the complaint set forth a health care liability claim, they nonetheless agree “the trial court’s handling of the possibility that some of the allegations in the [c]omplaint might be governed by the THCLA should be affirmed[.]”

The term “health care liability action” is statutorily defined as “any civil action . . . alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person[.]” Tenn. Code Ann. §

29-26-101(a)(1). “Under the statute, a ‘health care provider’ includes the employee of a health care provider, such as a physician, nurse, or technician, and the meaning of ‘health care services’ includes ‘staffing, custodial or basic care, positioning, hydration and similar patient services.’” *Osunde v. Delta Med. Ctr.*, 505 S.W.3d 875, 884 (Tenn. Ct. App. 2016) (quoting Tenn. Code Ann. § 29-26-101). The broad language employed by the statutes “casts a wide net over civil claims that arise within a medical setting.” *Cordell v. Cleveland Tennessee Hosp., LLC*, 544 S.W.3d 331, 336 (Tenn. Ct. App. 2017). “Because this definition is so broad, most claims arising in a medical setting will be health care liability claims.” *Cooper v. Mandy*, 639 S.W.3d 29, 35 (Tenn. 2022). Notably, the THCLA applies “regardless of the theory of liability” set forth in the complaint. Tenn. Code Ann. § 29-26-101(a)(1).

It is undisputed from the record that this is a civil action in which the defendants are health care providers. Accordingly, the sole issue is whether the complaint presents a health care liability action. To determine this, we must consider whether the alleged injuries are “related to the provision of, or failure to provide, health care services to a person.” Tenn. Code Ann. § 29-26-101(a)(1). Importantly, as this appeal arises from a motion to dismiss, we are bound to construe “the complaint liberally and allow[] [the appellees] the benefit of all reasonable inferences[.]” *Lacy v. Mitchell*, 541 S.W.3d 55, 60 (Tenn. Ct. App. 2016). Accordingly, we will review the allegations set forth in the complaint to determine whether it is “reasonable to infer” that the acts causing injury were not related to the provision of, or failure to provide, health care services. *Id.* at 61.

We agree with the trial court that certain allegations set forth in the complaint are related to the provision of health care services. The allegations set forth in support of the “misrepresentation” cause of action relate to the provision of health care as they are predicated on the submission of “false, untruthful, fraudulent and misleading billing, treatment and testing records[.]” The allegations maintain that the defendants misrepresented whether “services were medically necessary and reasonable for the treatment of the patient” and involved the performance of medical services “below acceptable standards of care.” These claims are similar to those set forth in *Cathey v. Beyer*, No. W2019-01603-COA-R3-CV, 2020 WL 1970722, at *5 (Tenn. Ct. App. Apr. 24, 2020). In *Cathey*, we considered whether a cause of action concerning the falsification of health records was related to the provision of health care. *Id.* We held that, because the claim concerned a dispute regarding “the validity of medical records,” the court would be required to determine “whether the disputed records [were] an accurate representation of the health care services received by the [patients].” *Id.* While the falsification of records may not have taken place during the provision of health care, it was “related to” the provision of health care, as they were “generated as a direct consequence” of the care provided. *Id.* We noted that the fact the “documentation may [have] occur[ed] outside the presence of a patient” did not render it unrelated to the provision of health care services. *Id.*

The same holds true in this case. In order to determine whether Ms. Henderson and Recovery Associates Group misrepresented that certain “services were medically necessary and reasonable for the treatment of the patient” or otherwise fell “below acceptable standards of care,” the trial court would be required to assess what health care services the employee actually received and whether those services comported with that for which the plaintiffs were billed. These allegations would obviously require the trial court to assess not only the health care that the employee received, but whether the health care satisfied the requisite standards of care. Accordingly, these allegations set forth a health care liability claim.

Additionally, a portion of the allegations supporting the claim the plaintiffs described as common law fraud allege the defendants misrepresented that certain services “were legally performed by an appropriately licensed provider, were medically necessary[,]” and involved the provision “of pre-determined fraudulent treatment[.]” As with the allegations discussed above, the assessment of these allegations would require the trial court to determine whether health care provided to the employee was “medically necessary” or performed by an appropriately licensed person. These matters clearly are related to the provision of health care services. Having reviewed the allegations set forth in the complaint, we agree with the trial court that a portion of the claims were health care liability claims and were proper for dismissal for failure to comply with the provisions of the THCLA. We affirm the trial court’s determination that all such requests for relief “are barred.”

However, we also agree that the complaint contained allegations that were not related to the provision of health care services and are not appropriate for dismissal at this stage of the proceedings.⁷ Most notably, a portion of the allegations set forth in the complaint maintain that Ms. Henderson and Recovery Associates Group submitted bills for services they never performed. The complaint states that surveillance of the employee demonstrates he was not present at the office of Recovery Associates Group during the time for which the plaintiffs were billed for health care services. We do not believe that these allegations are appropriate for dismissal at this stage of the proceedings, as it is “reasonable to infer” the allegations are related to dishonest business practices rather than the provision of or failure to provide health care. *See Lacy*, 541 S.W.3d at 61.

As highlighted by the plaintiffs, our Tennessee Supreme Court has previously

⁷ This Court has previously determined that portions of lawsuits could be dismissed as health care liability actions while any non-health care liability causes of actions set forth in the same complaint survived the motion to dismiss. *Lacy*, 541 S.W.3d at 62. The application for permission to appeal *Lacy* to our Tennessee Supreme Court was denied. However, we acknowledge the Supreme Court stated in a footnote of a later filed opinion that it was not addressing “whether the [THCLA] applies to both health care liability claims and non-health care liability claims asserted in one lawsuit.” *Cooper*, 639 S.W.3d at 36 n.11. For purposes of this opinion, we follow the precedent set forth in *Lacy*. However, we defer to our Supreme Court’s judgment regarding this practice moving forward.

considered a similar set of circumstances. In *Franks*, plaintiffs sued several health care providers who filed medical liens against them for bills incurred for the provision of health care services. *Franks v. Sykes*, 600 S.W.3d 908, 910 (Tenn. 2020). The plaintiffs maintained that the health care providers should have instead filed claims with their insurance providers. *Id.* The Court determined that the plaintiffs had filed claims pursuant to the Tennessee Consumer Protection Act, rather than the THCLA. The Court explained that, where allegations require an assessment of an injury “caused by a health care provider’s business practices” rather than the “health care provider’s professional conduct, such as a deviation from the applicable standard of medical care” then it does not involve an assessment of a health care liability action. *Id.* at 914. The plaintiffs in this case have not cited the Tennessee Consumer Protection Act as a basis for recovery. However, when assessing whether a complaint has set forth a health care liability action, we assess the “claims” themselves “regardless of the theory of liability on which the action is based.” Tenn. Code Ann. § 29-26-101(a)(1). Accordingly, it is not fatal to the plaintiffs’ argument that they have not relied on those specific provisions of law.

In a subsequent opinion, the Court explained that the *Franks* “plaintiffs’ claims were not health care liability claims because they alleged neither that the hospitals failed to provide proper medical treatment nor that the plaintiffs suffered any injuries from the medical treatment they received.” *Cooper*, 639 S.W.3d at 37 (citing *Franks*, 600 S.W.3d at 915). The Court stated that the *Cooper* plaintiffs’ reliance on *Franks* was misplaced because the alleged injury was caused by a surgery resulting in “physical injuries and other damages” rather than “false statements” made by the defendants. *Id.* A portion of the allegations presented in this case maintain that the defendants intentionally billed for health care services that were never provided. Just as the allegations set forth in *Franks* maintained that an injury was caused by dishonest business practices, the claims regarding billing for services never rendered also allege an injury was caused by dishonest business practices. These allegations maintain that the defendants caused a financial injury through “intentional and egregious acts of fraud” by “intentionally submit[ing] for billing psychiatric procedures that were never performed” and are predicated on neither the failure to provide proper medical treatment nor an injury suffered based on medical treatment that was received. *Cooper*, 639 S.W.3d at 37.

Additionally, in some cases, we have previously determined that willful and malicious actions perpetrated by a health care provider, or the provider’s employee, in a health care setting were nonetheless divorced from the provision of health care services. See *Cordell*, 544 S.W.3d at 338 (explaining that “the willful and malicious actions” of a hospital’s security employee who perpetrated a rape against the plaintiff in a medical setting did not involve the provision of health care services as the alleged conduct “relate[d] solely to the actions of” the employee); *Lacy*, 541 S.W.3d at 61 (explaining it was reasonable to infer that a complaint alleged an injury was caused after the provision of health care services where it asserted that an injury was caused by a chiropractor hitting the plaintiff “in the back with her medical folder” as he “walked out the door”). Here, the

complaint alleges that the defendants committed willful actions in the form of fraud. In the same way that a defendant's willful commission of physical violence is not related to his or her responsibilities to provide health care services, neither is the willful commission of fraud by billing for services that never occurred.

Further, while the statute does encapsulate the failure to provide health care services as a basis for a health care liability claim, we nevertheless hold that it is "reasonable to infer" the allegations here do not relate to the failure to provide health care services. *Lacy*, 541 S.W.3d at 61. Tennessee courts have often considered health care liability claims in which a plaintiff has alleged that an injury was caused by a health care provider failing to provide treatment that was medically necessary under the circumstances. *See Shipley v. Williams*, 350 S.W.3d 527, 533 (Tenn. 2011) (involving allegations of medical negligence under a previous version of the THCLA for the failure to admit a patient to the hospital and the failure to provide necessary medical treatment); *Black v. State*, No. M2022-00399-COA-R3-CV, 2023 WL 4743337, at *2 (Tenn. Ct. App. July 25, 2023) (considering arguments as to whether a health care provider violated "the acceptable standards of professional practice" by failing to "follow [a] care plan," failing "to prevent [the] development" of a urinary tract infection, and failing "to properly assess [a] patient"); *Bradley v. Bishop*, 538 S.W.3d 518, 525 (Tenn. Ct. App. 2017) (presenting an argument that a physician's failure to recognize and treat an injury during the course of a surgery violated the applicable standard of care). Each of these circumstances involved health care services that the plaintiff alleged should have been provided to prevent an injury and involved questions of whether the failure to provide those services constituted a breach of the standard of care. The plaintiffs' allegations that the defendants committed intentional fraud do not allege that the failure to provide health care services caused the injury of which they complain. Likewise, these allegations do not allege that the defendants violated a requisite standard of care. Rather, the plaintiffs allege that the defendants' dishonest billing practices caused them an injury. Accordingly, they do not maintain that the "failure to provide[] health care services" caused an injury. Tenn. Code Ann. § 29-26-101(a)(1).

As stated above, while certain allegations are related to the provision of health care, a portion of the allegations are instead predicated on "intentional and egregious acts" of submitting bills for services that were never provided. Accordingly, viewing the complaint in the light most favorable to the plaintiffs, we find it is not apparent from the complaint that all of the allegations involve the provision, or failure to provide, health care services. *See Lacy*, 541 S.W.3d at 61. Therefore, the trial court did not err when it granted in part and denied in part the motion to dismiss. Notably, we do not hold that any specific theory of liability is fully dismissed. Each of the three causes of action incorporated each and every allegation set forth in the complaint as a basis for recovery and there is natural overlap in the causes of action raised by the plaintiffs. *See Hodge*, 382 S.W.3d at 342-43. Therefore, we affirm the trial court's decision to grant the motion to dismiss as to all allegations that would require an assessment of an injury caused by the provision of health care services or an assessment of health care services to determine whether it conformed

with the requisite standard of care. We also affirm the trial court's decision to deny the motion to dismiss as to all allegations that would not require such an assessment.

As we have determined that the trial court did not err when it determined certain allegations presented non-health care liability claims, the issue of whether those claims were subject to dismissal for failing to comply with the provisions of the THCLA are without merit.

IV. CONCLUSION

For the foregoing reasons, the ruling of the circuit court is affirmed and the cause remanded to the trial court for further proceedings. Costs of this appeal are taxed to the appellants, Recovery Associates Group at Southwind, PLLC, and Scherri Nicole Henderson, LPC.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE