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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

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**Ex parte Affinity Hospital, LLC, d/b/a Grandview Medical
Center**

PETITION FOR WRIT OF MANDAMUS

**(In re: Kenneth Davis, as personal representative
of the Estate of Catherine Davis, deceased**

v.

Affinity Hospital, LLC, et al.)

(Jefferson Circuit Court: CV-20-902666)

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Ex parte Raymond Chad Wade, M.D.

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of the Estate of Catherine Davis, deceased**

v.

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(Jefferson Circuit Court: CV-20-902666)

MENDHEIM, Justice.

Affinity Hospital, LLC ("Affinity"), d/b/a Grandview Medical Center ("Grandview"), and Raymond Chad Wade, M.D. ("Dr. Wade"), separately petition this Court for writs of mandamus directing the Jefferson Circuit Court to vacate its November 17, 2021, orders denying their motions to dismiss an amended complaint in the wrongful-death action commenced by Kenneth Davis ("Kenneth"), the personal representative of the estate of his wife, Catherine Davis ("Catherine"), and to enter orders granting their motions to dismiss. We grant the petitions.

I. Facts

In general, Kenneth alleged in all versions of his complaint that Catherine was admitted to Grandview on March 21, 2019, to undergo ureteral surgery and that she remained at Grandview for three subsequent days where she ultimately died on March 24, 2019. The details surrounding those allegations form the crux of the dispute presented by these petitions.

On July 24, 2020, Kenneth commenced the underlying action in the Jefferson Circuit Court against Affinity and several fictitiously named defendants. In his original complaint, Kenneth alleged:

"6. On or about March 21, 2019, Catherine Davis was admitted to Grandview Medical Center to undergo an outpatient ureteral surgery. During this surgery, she suffered one or more unintended lacerations.

"7. [Catherine] developed a severe infection which was not timely diagnosed or treated.

"8. According to Grandview Medical records, she developed abdominal compartment syndrome.

"9. She died on March 24, 2019, as a result of sub-standard care by [Grandview], never having been discharged from the outpatient procedure."

Kenneth alleged that Affinity and its employees had violated the applicable standard of care under the Alabama Medical Liability Act

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("the AMLA"), § 6-5-480 et seq. and § 6-5-540 et seq., Ala. Code 1975, by "[n]egligently perform[ing] invasive procedures causing injury" and by failing to: "timely diagnose [the] laceration," "emergently treat [the] laceration," "monitor for signs of infection," "report signs of infection," "diagnose [the] infection," "treat [the] infection," and "formulate, implement and execute a plan of care" or "obtain [a] timely consult."

On August 27, 2020, Affinity removed the case to the United States District Court for the Northern District of Alabama. On January 5, 2021, Kenneth filed a "First Amended Complaint" in which he added Urology Centers of Alabama, P.C. ("Urology Centers"), as a defendant, alleging that Urology Centers had negligently performed the ureteral surgery. That same day, Urology Centers filed a motion to remand the case to state court based on a lack of diversity jurisdiction. On February 4, 2021, the federal district court entered an order remanding the case to the Jefferson Circuit Court.

On March 3, 2021, Kenneth filed the "First Amended Complaint" in the circuit court. Subsequently, on March 15, 2021, Kenneth filed a "Second Amended Complaint" in which, for the first time, he added Dr. Wade as a defendant. On March 23, 2021, Kenneth filed a "Third

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Amended Complaint" in which he clarified that Dr. Wade was "working as a hospitalist at Grandview Hospital" at the time he provided care to Catherine following the surgery. On April 6, 2021, Kenneth filed a "Fourth Amended Complaint" in which he specified that "[t]he surgery was performed by Eric Brewer, Jr., M.D., [of] Urology Centers of Alabama." That complaint also stated that care was provided to Catherine after the surgery by "Andrew Strang, M.D., [from] Urology Centers" and by Dr. Wade.

In an April 26, 2021, response to a motion to dismiss the fourth amended complaint filed by Urology Centers, Kenneth stated that "[t]he Complaint alleges that [Urology Centers] was negligent during surgery and then failed to take the necessary steps to diagnose and treat [Catherine's] infection, which led to her death." (Emphasis added.) In a response to a motion to dismiss the fourth amended complaint filed by Dr. Wade, Kenneth stated that "[d]efendant Wade failed to comply with the applicable standard of care by failing to take the necessary steps to diagnose and treat [Catherine's] laceration and infection, which led to her death." (Emphasis added.)

On May 25, 2021, Kenneth filed a "Fifth Amended Complaint." That complaint provided the most detail to date with respect to his alleged facts:

"8. On or about March 21, 2019, Catherine Davis was admitted to Grandview Medical Center to undergo an outpatient ureteral surgery. During this surgery, she suffered one or more unintended lacerations, which left a hole in her bowel. The surgery was performed by Eric Brewer, Jr., [.] M.D., [of] Urology Centers of Alabama.

"9. After the surgery [Catherine] remained under the care of Grandview Medical Center and Urology Centers of Alabama. [Catherine] was provided care by Andrew Strang, M.D., [.] from Urology Centers of Alabama and Raymond Chad Wade, M.D., a hospitalist at Grandview Medical Center.

"10. While under the care of Defendants on March 21st, March 22nd, March 23rd and March 24th, [Catherine] displayed symptoms of complications from the surgery and infection. On March 23, 2019, it was noted that [Catherine] experienced abdominal pain, nausea and tachycardia. On March 24, 2019, it was also noted that [Catherine] had fecal drainage.

"11. [Catherine] developed a severe infection which was not timely diagnosed or treated. On March 24, 2019, it was noted that [Catherine] had increased tachycardia and was unable to communicate. These symptoms were as a result of the undiagnosed infection.

"12. According to Grandview Medical records, [Catherine] developed abdominal compartment syndrome.

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"13. Catherine Davis died on March 24, 2019, as a result of sub-standard care by Defendants, never having been discharged from the outpatient procedure."

In the fifth amended complaint, Kenneth listed ways Affinity and Dr. Wade allegedly had breached the standard of care owed to Catherine under the AMLA. The lists for both defendants were identical. Kenneth alleged that both Affinity and Dr. Wade had failed to: "emergently treat [the] laceration"; "monitor for signs of infection"; "report signs of infection"; "treat [the] infection"; "formulate, implement and execute a plan of care"; "obtain [a] timely consult"; and "properly assess and treat [Catherine] for signs and symptoms of abdominal compartment syndrome."

On October 25, 2021, Kenneth filed a motion to dismiss Urology Centers as a defendant from the action without prejudice. Simultaneously, Kenneth filed an "Amended and Restated Complaint" ("the restated complaint"). In the restated complaint, Kenneth stated that he was amending the complaint:

"2. by dismissing Defendant Urology Centers of Alabama, PC as a named defendant;

"3. by asserting additional allegations against Defendants Affinity Hospital, LLC d/b/a Grandview and Grandview Medical Center; [and]

"4. by asserting additional allegations against Raymond Chad Wade, MD"

Kenneth's factual allegations in the restated complaint asserted:

"7. On or about March 21, 2019, Catherine Davis was admitted to Grandview to undergo an outpatient ureteral surgery. After surgery, [Catherine] was admitted to Grandview under the hospitalist service for monitoring and observation.

"8. Over the course of the next days, [Catherine], who was also a diabetic, began having fluctuating blood glucose levels that ultimately remained low. Despite [Catherine's] low blood glucose levels, [Catherine] was ordered to be placed back on her home insulin regimen.

"9. On Sunday, March 24th, three days after surgery, [Catherine's] mental status materially changed, and she was assessed by Grandview nurses and the hospitalist, Dr. Wade, as 'confused'; additionally, [Catherine's] abdomen was assessed and recorded as 'distended.' Despite being assessed as confused, with an altered mental status, [Catherine] was not reassessed for fall safety, nor were her blood glucose levels monitored more frequently. Additionally, there was no follow-up or work-up of her 'distended' abdomen.

"10. Later in the day on Sunday, March 24th, [Catherine] suffered a fall while being assisted to the restroom by [Kenneth]. As a result of the fall, [Catherine] suffered a perforated viscus, following her recent abdominal surgery and, ultimately, abdominal compartment syndrome.

"11. Shortly after her fall and three days after her outpatient surgery, [Catherine] died."

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Based on the foregoing factual allegations, Kenneth asserted that Affinity had negligently breached the applicable standard of care owed to Catherine in the following ways:

"a. by failing to properly monitor [Catherine's] blood glucose levels and report results to [Catherine's] physicians;

"b. by failing to appropriately monitor, manage, and/or treat [Catherine's] blood glucose levels, according to physician orders and/or hospital policies, procedures, and/or guidelines;

"c. by failing to properly assess and timely report [Catherine's] material changes in condition; and

"d. by failing to timely and properly perform a fall risk assessment for [Catherine], following her changes in condition, including but not limited to a change in mental status."

Kenneth asserted that Dr. Wade had negligently breached the applicable standard of care in the following ways:

"a. by failing to recognize, diagnose, and provide interventional treatment for [Catherine], following her material changes in condition;

"b. by failing to notify or communicate with [Catherine's] other healthcare providers about [Catherine's] material changes in condition, including her distended abdomen and her confusion;

"c. by failing to properly timely review, interpret, or diagnose [Catherine's] low blood glucose levels and provide interventional treatment; and

"d. by failing to investigate, examine, or provide any follow-up work-up for the cause of [Catherine's] distended abdomen."

The restated complaint asserted no claims against Urology Centers.

On November 5, 2021, Affinity filed a motion to dismiss Kenneth's restated complaint on the ground that it was barred by the two-year statute of limitations applicable to wrongful-death actions, see § 6-5-410(d), Ala. Code 1975,¹ and that the claims against Affinity in the restated complaint could not relate back to the original complaint under Rule 15(c)(2), Ala. R. Civ. P.² On November 8, 2021, Dr. Wade filed a

¹Section 6-5-410(d), Ala. Code 1975, states that a wrongful-death action "must be commenced within two years from and after the death of the testator or intestate." Ordinarily, actions under the AMLA "must be commenced within two years next after the act, or omission, or failure giving rise to the claim, and not afterwards ..." § 6-5-482(a), Ala. Code 1975. However, this Court has held that the statute of limitations for wrongful-death actions, rather than the AMLA limitations period, applies to wrongful-death actions alleging medical malpractice. See Hall v. Chi, 782 So. 2d 218, 222 (Ala. 2000); McMickens v. Waldrop, 406 So. 2d 867, 869 (Ala. 1981).

²In pertinent part, Rule 15(c), Ala. R. Civ. P., provides:

"(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

"....

"(2) the claim or defense asserted in the amended pleading arose out of the conduct,

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motion to dismiss Kenneth's restated complaint, asserting the same ground for dismissal as Affinity with respect to the claims in that complaint against Dr. Wade.

On November 15, 2021, Kenneth filed a response in opposition to both motions to dismiss the restated complaint. Kenneth maintained that

"[t]his case presents a classic scenario for relation-back pursuant to Rule 15(c)(2). While Kenneth's theories of wrongdoing against Dr. Wade and [Affinity's] nurses have evolved, the new and additional theories set forth in his October 25, 2021, amendment are unquestionably related to the same three-day occurrence of bad medical and nursing care provided by Dr. Wade and [Affinity's] nurses."

The circuit court held a hearing concerning Affinity's and Dr. Wade's motions to dismiss the restated complaint. Following that hearing, on November 17, 2021, the circuit court entered orders denying the motions to dismiss. The orders did not detail the circuit court's reasoning for denying the motions.

On December 16, 2021, Affinity filed a petition for a writ of mandamus to this Court with respect to the circuit court's denial of its

transaction, or occurrence set forth or attempted to be set forth in the original pleading, except as may be otherwise provided in Rule 13(c)[, Ala. R. Civ. P.,] for counterclaims maturing or acquired after pleading"

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motion to dismiss. On December 29, 2021, Dr. Wade filed a petition for a writ of mandamus to this Court with respect to the circuit court's denial of his motion to dismiss. Subsequently, this Court ordered answers and briefs, and we consolidated the petitions because they present identical issues from the case below.

II. Standard of Review

"A writ of mandamus is an extraordinary remedy available only when the petitioner can demonstrate: "(1) a clear legal right to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) the properly invoked jurisdiction of the court.'" Ex parte Nall, 879 So. 2d 541, 543 (Ala. 2003) (quoting Ex parte BOC Grp., Inc., 823 So. 2d 1270, 1272 (Ala. 2001)).'

"Ex parte Watters, 212 So. 3d 174, 180 (Ala. 2016).

"The general rule is that, subject to certain narrow exceptions, the denial of a motion to dismiss is not reviewable by petition for a writ of mandamus.' Ex parte Brown, 331 So. 3d 79, 81 (Ala. 2021). However,

"[t]his Court has recognized that an appeal is an inadequate remedy in cases where it has determined that a defendant should not have been subjected to the inconvenience of litigation because it was clear from the face of the complaint that the defendant was entitled to a dismissal or to a judgment in its favor.'

"Ex parte Sanderson, 263 So. 3d 681, 687-88 (Ala. 2018) (citing Ex parte Hodge, 153 So. 3d 734 (Ala. 2014), and Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060 (Ala. 2014)). In particular, in Ex parte Hodge, this Court permitted mandamus review of a trial court's denial of a motion to dismiss contending that the plaintiff's malpractice claim was barred by the four-year statute of repose contained in § 6-5-482(a), Ala. Code 1975, when the applicability of that statute was clear from the face of the complaint. Cf. Ex parte Watters, 212 So. 3d at 182 (denying a mandamus petition because 'it [was] not abundantly clear from the face of [the plaintiff's] complaint whether the survival statute dictate[d] dismissal of the legal-malpractice claim because the issue whether the claim sound[ed] in tort, in contract, or in both for that matter, [was] sharply disputed by the parties')."

Ex parte Abbott Lab'ys [Ms. 1191001, May 28, 2021] ___ So. 3d ___, ___ (Ala. 2021).

"This Court reviews de novo the trial court's application of Rule 15(c)(2). Whitfield v. Murphy, 475 So. 2d 480, 483 (Ala. 1985) (stating that '[t]he relation-back doctrine of Rule 15(c) ... is an objective standard and its application under the prescribed circumstances is nondiscretionary'); Cummins Engine Co. v. Invictus Motor Freight, Inc., 641 So. 2d 761, 764 (Ala. 1994); and Gulf States Steel, Inc. v. William Clarence White, 742 So. 2d 1264, 1267 (Ala. Civ. App. 1999)."

Prior v. Cancer Surgery of Mobile, P.C., 959 So. 2d 1092, 1094-95 (Ala. 2006).

The sum of the foregoing standards is that, for Affinity and Dr. Wade to be entitled to the writs of mandamus they seek, it must be clear from the face of the restated complaint that Kenneth's claims in

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that complaint against Affinity and Dr. Wade do not relate back to the original complaint and, therefore, that the claims are barred by the two-year statute of limitations in § 6-5-410(d).³

III. Analysis

"The Alabama Rules of Civil Procedure allow parties to amend their complaints. Rule 15(a), Ala. R. Civ. P. Even if otherwise barred by the applicable statute of limitations, an amendment to a complaint may be allowed if it 'arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading....' Rule 15(c)(2), Ala. R. Civ. P. However, if allowing the plaintiff to amend his or her complaint would prejudice the opposing party, the amendment should be denied. Ex parte Johnston-Tombigbee Furniture Mfg. Co., 937 So. 2d 1035 (Ala. 2005)."

Prior, 959 So. 2d at 1095 (footnote omitted).

Affinity and Dr. Wade contend that the factual allegations asserted against them in the restated complaint are completely different than

³Kenneth has not challenged whether mandamus is an appropriate remedy in this case. We note that mandamus petitions traditionally have been permitted in the context of the relation-back doctrine under Rule 15(c)(3), i.e., when substituting a defendant for a fictitiously named defendant after the expiration of the statutory limitations period. See, e.g., Ex parte Profit Boost Mktg., Inc., 254 So. 3d 862, 866 (Ala. 2017) ("A petition for a writ of mandamus ... is the proper means to seek review of an order denying a motion to dismiss or for a summary judgment filed by a defendant added after the statute of limitations has run, under Rule 15(c)(3)") (quoting Ex parte Novus Utils., Inc., 85 So. 3d 988, 995 (Ala. 2011)); Ex parte Stover, 663 So. 2d 948 (Ala. 1995).

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those presented in the original complaint and, therefore, that the restated complaint is barred by the applicable statute of limitations. As they put it:

"[Kenneth] completely changed every material fact on which his action was based, and now asserts that previously unmentioned conduct[] breached previously unmentioned standards of care, and that [Catherine's] death was caused by a previously unmentioned fall. ... Nothing in any prior complaint gave [Affinity or Dr. Wade] the required notice that [they were] being called upon to defend any claim arising from the previously unmentioned March 24, 2019, fall, or based upon the newly alleged omissions in blood glucose monitoring or fall assessment of a diabetic patient. Instead, all of [Kenneth's] prior submissions asserted that unintended bowel lacerations from [Catherine's] March 21, 2019, surgery were the genesis of the causation leading to her death, and that the conduct upon which [Kenneth] sought to impose liability were alleged failures to diagnose and treat those surgical lacerations and the infection alleged to have resulted therefrom."

Affinity's & Dr. Wade's petitions, pp. 2-3.⁴

Kenneth responds by arguing that the core of his allegations -- that a lack of care provided by Affinity and Dr. Wade caused Catherine's death -- has remained the same throughout the litigation.

"Here, 'the injury' is Catherine's death caused by abdominal compartment syndrome, and Kenneth's October 25, 2021, amendment merely concerns the 'same

⁴The argument portion of Affinity's and Dr. Wade's petitions are identical save for references to the parties' names.

matter differently laid.' [ALFA Mut. Ins. Co. v. Smith, 540 So. 2d 691, 694 (Ala. 1988).] [Affinity and Dr. Wade] contend the acts of causing a laceration, failing to detect a laceration, and failing to care for Catherine after receiving such abdominal injuries from such a laceration are different from acts of failing to properly care for Catherine following a surgery in her abdomen, allowing her to fall, which caused/exacerbated her abdominal injuries. While some (but not all) of these acts are different, this is a distinction without a difference for purposes of relation back. What is important is that Kenneth has always alleged that (1) [Affinity's] nurses and Dr. Wade provided improper care for Catherine during the three-day period following what was supposed to be an outpatient surgery and (2) their improper care caused her abdominal injuries, which caused her abdominal compartment syndrome, which caused her death. To paraphrase Heald, it is 'immaterial what form the negligence took, so long as it was negligence of [Affinity's nurses and Dr. Wade that] caus[ed] the [death].' [Alabama Consol. Coal & Iron Co. v. Heald, 154 Ala. 580, 587, 45 So. 686, 688 (1907) (quoting Galveston, Harrisburg & San Antonio Ry. Co. v. Perry, 38 Tex. Civ. App. 81, 90, 85 S.W. 62, 66 (1905)).]"

Kenneth's respondent's brief, p. 10.

Affinity and Dr. Wade rejoin that Kenneth's view of the relation-back doctrine presents an "an impermissibly broad interpretation of Rule 15(c)(2) that is inconsistent with the heightened pleading standard the Alabama Legislature made applicable in all AMLA cases, and the notice requirements of due process and fundamental fairness." Affinity's petition, p. 13; Dr. Wade's petition, p. 10. More specifically, Affinity and Dr. Wade contend that Rule 15(c)(2) must be interpreted in light of "the

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heightened pleading requirements of [Ala. Code 1975,] § 6-5-551."

Dr. Wade's reply brief, p. 3. Section 6-5-551, Ala. Code 1975, in part, provides that for an AMLA action

"[t]he plaintiff shall include in the complaint filed in the action a detailed specification and factual description of each act and omission alleged by plaintiff to render the health care provider liable to plaintiff and shall include when feasible and ascertainable the date, time, and place of the act or acts. The plaintiff shall amend his complaint timely upon ascertainment of new or different acts or omissions upon which his claim is based; provided, however, that any such amendment must be made at least 90 days before trial. Any complaint which fails to include such detailed specification and factual description of each act and omission shall be subject to dismissal for failure to state a claim upon which relief may be granted."

(Emphasis added.) Because under § 6-5-551 "the plaintiff must give the defendant health care provider fair notice of the allegedly negligent act and must identify the time and place it occurred and the resulting harm," Mikkelsen v. Salama, 619 So. 2d 1382, 1384 (Ala. 1993), Affinity and Dr. Wade argue that Kenneth's generalized framing of his allegations for purposes of the relation-back doctrine cannot be permitted in this case.

Affinity and Dr. Wade make a logically intriguing argument. The exactness of pleading required of a plaintiff bringing an AMLA action conceivably could make it more difficult for such a plaintiff to amend his

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or her complaint after the expiration of the applicable statutory limitations period in such a way that the claims would still "ar[i]se out of the conduct, transaction, or occurrence" alleged in the original complaint. Rule 15(c)(2). Even so, we must be careful not to conflate the pleading requirements of § 6-5-551 with the criteria for relation back provided in Rule 15(c)(2).

To begin with, as Kenneth notes, § "6-5-551 does not impose a statute of limitations requirement. Nor does § 6-5-551 address relation back" Kenneth's respondent's brief, p. 17. By its terms, § 6-5-551 addresses a plaintiff's responsibility to provide a "detailed specification and factual description of each act and omission" in his or her complaint because a failure to do so "shall ... subject [the complaint] to dismissal for failure to state a claim upon which relief may be granted"; it does not directly concern whether an amended AMLA complaint relates back to an original AMLA complaint. That § 6-5-551 is concerned with the substantive details of a particular complaint rather than whether an amended complaint relates back to an original complaint is reflected in the fact that § 6-5-551 expressly contemplates that a plaintiff will amend a complaint "upon ascertainment of new or different acts or omissions

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upon which his claim is based." (Emphasis added.) Second, although § 6-5-551 is concerned with the specificity of allegations in a complaint that asserts claims under the AMLA, Rule 15(c)(2) expressly provides leeway to a plaintiff in how allegations are expressed in an original complaint because the rule states that claims in an amended complaint must arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading" (Emphasis added.) Third, even though Affinity and Dr. Wade repeatedly argue that Rule 15(c)(2) must be interpreted in light of the pleading requirements of § 6-5-551, they fail to cite a single case supporting that position.⁵

Based on the foregoing, we decline to apply the criteria of Rule 15(c)(2) differently in this case than we have in previous cases. Our previous cases have indicated that whether an amended complaint will relate back to an original complaint focuses on whether the amended complaint consists of a refinement of the original allegations, and therefore is permissible under Rule 15(c)(2), or addresses different

⁵Affinity and Dr. Wade cite Long v. Wade, 980 So. 2d 378 (Ala. 2007), but Long did not implicate the relation-back doctrine. It concerned the so-called good-count/bad-count rule and what constitutes a claim under the AMLA for purposes of that rule.

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conduct, transactions, or occurrences than originally pleaded, and therefore will not relate back.

"A new cause of action is not set up by amendment where the same substantial facts are pleaded merely in a different form, so that a recovery on either count of the complaint would bar a recovery on the other. As long as the plaintiff adheres to the contract or the injury originally declared upon, an alteration of the modes in which the defendant has broken the contract or caused the injury is not an introduction of a new cause of action. The test is whether the proposed amendment is a different matter, another subject of controversy, or the same matter more fully or differently laid to meet the possible scope of the testimony."

ALFA Mut. Ins. Co. v. Smith, 540 So. 2d 691, 694 (Ala. 1988) (quoting Knox v. Cuna Mut. Ins. Soc'y, 282 Ala. 606, 613, 213 So. 2d 667, 673 (1968)) (emphasis omitted and emphasis added).

Kenneth contends that the restated complaint addresses the same "matter" as the original complaint, just "differently laid." This is so, he says, because the matter at issue is Catherine's death, caused by abdominal compartment syndrome, which Catherine acquired because Affinity and Dr. Wade failed to diagnose and treat an infection while she was in their care from March 21 through March 24, 2019. Kenneth maintains that, keeping in mind those basic facts, the "matter" is the same in his original complaint and the restated complaint. Kenneth's

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argument centers on two cases that he says support his view: Sonnier v. Talley, 806 So. 2d 381 (Ala. 2001), and Bednarski v. Johnson, [Ms. 1200183, Sept. 30, 2021] ___ So. 3d ___ (Ala. 2021).

The Prior Court summarized the facts and conclusion in Sonnier as follows:

"In Sonnier, Tammy Talley sued Flowers Hospital and Dr. Sonnier and Dr. van der Meer for performing an unnecessary hysterectomy. She alleged general negligence and malpractice 'during the period June 1990 through October 1991' and failure to obtain informed consent and sought damages for an alleged loss of consortium. Sonnier, 806 So. 2d at 383. Talley then filed an amended complaint alleging that the same defendants 'had made misrepresentations of fact related to the surgery, the cancer, and her health during the period from June 1991 through October 1991.' Id. This Court held that Talley's amended complaint related back to her original complaint under Rule 15(c)(2), Ala. R. Civ. P. Even though the amended complaint alleged a new cause of action, it was limited to the same time period and the same parties. This Court held that the reason the amended complaint related back was that the amendment had "'ma[de] more specific what ha[d] already been alleged.'" Sonnier, 806 So. 2d at 386-87 (quoting National Distillers & Chem. Corp. v. American Laubscher Corp., 338 So. 2d 1269, 1273 (Ala. 1976)). Talley initially alleged that the doctors had been negligent over a specified time period. Her amended complaint alleged a closely related cause of action against the same defendants stemming from the same operative facts."

959 So. 2d at 1096-97 (emphasis added).

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Bednarski involved a situation in which, in October 2014, Hope Johnson consulted Dr. Kerri Hensarling for evaluation and prescription of a birth-control method. Johnson was particularly concerned because her mother had a history of blood clots and some methods of birth control can increase the risk of blood clots. Dr. Hensarling misread Johnson's blood-test results as not having any risk factors for blood clotting when, in fact, she did have a risk factor that could contribute to blood clotting, and so he mistakenly prescribed a birth-control pill that, in combination with Johnson's risk factor, could increase her risk of having blood clots. On December 1, 2014, Johnson visited an Auburn Urgent Care ("AUC") clinic complaining of shortness of breath, chest pains, coughing, a headache, and a sore throat. Dr. Zenon Bednarski diagnosed Johnson with bronchitis and prescribed antibiotic medication. Two days later, Johnson returned to the AUC clinic with worsening conditions. Following a blood test, Johnson was diagnosed with leukocytosis and dyspnea and was prescribed an inhaler. The next morning, Hope died of a pulmonary blood clot. The original complaint alleged that AUC and Dr. Bednarski had breached the standard of care applicable to them by failing to properly assess and treat Johnson on December 1 and 3, 2014.

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Specifically, it faulted AUC and Dr. Bednarski for failing to diagnose Johnson with pulmonary emboli and failing to give correct treatment for that condition. The amended complaint, which was filed after the statutory limitations period had expired, substituted Dr. David Willis for a fictitiously named defendant, alleging that Dr. Willis had treated Johnson at the AUC clinic on December 3, 2014, and the amended complaint added a new count against AUC and Dr. Bednarski alleging that they "had been negligent 'and/or' wanton in their training and supervision of Dr. Willis." Bednarski, ___ So. 3d at ___. Specifically, the amended complaint alleged that AUC and Dr. Bednarski had either failed to train Dr. Willis in how to access AUC's electronic medical-records system or had trained him to bypass the electronic medical-records system, "[t]hereby leading to incomplete and/or total loss of access to vital medical information necessary for Hope Johnson to be adequately, properly and correctly diagnosed and treated on December 3, 2014,'" Id. at ___. After concluding that the substitution of Dr. Willis for a fictitiously named defendant was permissible under Rule 15(c)(3), Ala. R. Civ. P., the Court addressed whether the new count in the amended complaint concerning the training and supervision of Dr. Willis

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related back to the original complaint under Rule 15(c)(2). The Court concluded that the new allegations in the amended complaint were "a further refinement of the allegations in [the] initial complaint that the Bednarski defendants had breached the applicable standard of care" "in providing care to [Johnson]." Id. at ____.

Kenneth believes that the situations presented in Sonnier and Bednarski are analogous to the situation presented by his restated complaint. In Sonnier, the Court allowed to relate back an amended complaint that stated a new cause of action against the same defendants for conduct that occurred within the same period alleged in the original complaint. Kenneth argues that, similar to Sonnier, his restated complaint alleges conduct that occurred over the same period -- March 21-24, 2019 -- as he alleged in his original complaint. In Bednarski, the Court allowed to relate back an amended complaint that stated new facts and conduct that occurred during the same dates alleged in the original complaint and that allegedly contributed to AUC's and Dr. Bednarski's failure to properly diagnose and treat Johnson. Kenneth argues that, like in Bednarski, his restated complaint adds facts and conduct that allegedly occurred during the same period listed in the

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original complaint and that allegedly contributed to Catherine's contracting abdominal compartment syndrome and ultimately dying.

However, Sonnier and Bednarski are not so analogous to this case as Kenneth supposes. In Sonnier, the plaintiffs, in their amended complaint, simply presented another theory of liability against the defendants, i.e., misrepresentation, based on conduct that was implicit in the allegations presented in the original complaint. In Bednarski, the amended complaint added new facts and a new claim concerning conduct that allegedly contributed to the same lack of care by the defendants that was alleged in the original complaint. It was unsurprising that the Court allowed such amendments given that the Court previously had held that "'an amendment which changes only the legal theory of the action, or adds another claim arising out of the same transaction or occurrence, will relate back.'"⁶ National Distillers & Chem. Corp. v. American Laubscher Corp., 338 So. 2d 1269, 1274 (Ala. 1976) (quoting 3 James W. Moore et al., Moore's Federal Practice and Procedure ¶ 15.15[3], pp. 1025-31

⁶Callens v. Jefferson County Nursing Home, 769 So. 2d 273 (Ala. 2000), which Kenneth also cites, falls into the same category. The amended complaint in that case merely added a different theory of liability -- negligent hiring, training, and supervision -- against a defendant already a party to the case, without altering underlying facts.

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(1968 ed.)). In other words, in both cases, the amended complaints ""ma[de] more specific what ha[d] already been alleged."" Sonnier, 806 So. 2d at 387 (quoting National Distillers & Chem. Corp., 338 So. 2d at 1273, quoting in turn Moore ¶ 15.15[3]).

Unlike in Sonnier and Bednarski, in his restated complaint Kenneth did not simply assert a new theory of liability against Affinity and Dr. Wade or add facts that explained conduct that previously had been alleged. Instead, Kenneth altered what occurrence allegedly caused Catherine's injuries and what conduct of Affinity and of Dr. Wade allegedly exacerbated the occurrence that precipitated Catherine's death. Specifically, in the original complaint (and five subsequent amended complaints), Kenneth alleged that Catherine had sustained "unintended lacerations" during the ureteral surgery and that a failure to diagnose those injuries had led to Catherine's contracting a severe infection and, eventually, abdominal compartment syndrome, which caused her death. In the restated complaint, however, Kenneth alleged for the first time that Catherine was a diabetic and that a lack of care in monitoring Catherine's "fluctuating blood glucose levels" and her "distended" abdomen and in not "reassess[ing Catherine's condition] for fall safety"

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led her to fall in Grandview, which caused her to have "a perforated viscus, following her recent abdominal surgery and, ultimately abdominal compartment syndrome." Additionally, the restated complaint listed several actions by Affinity and Dr. Wade that Kenneth alleged had breached the applicable standard of care owed to Catherine that were entirely different than some of the actions listed in the original complaint (and five subsequent amended complaints). For example, in the fifth amended complaint, Kenneth asserted that both Affinity and Dr. Wade had breached the applicable standard of care by failing to "emergently treat [the] laceration," "monitor for signs of infection," "report signs of infection," and "treat [the] infection." In the restated complaint, however, Kenneth asserted that Affinity had negligently breached the applicable standard of care in part "by failing to properly monitor [Catherine's] blood glucose levels and report results to [Catherine's] physicians"; "by failing to appropriately monitor, manage, and/or treat [Catherine's] blood glucose levels, according to physician orders and/or hospital policies, procedures, and/or guidelines"; and "by failing to timely and properly perform a fall risk assessment for [Catherine], following her changes in condition, including but not limited to a change in mental status."

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Likewise, in the restated complaint, Kenneth asserted that Dr. Wade had negligently breached the standard of care in part "by failing to properly timely review, interpret, or diagnose [Catherine's] low blood glucose levels and provide interventional treatment" and "by failing to investigate, examine, or provide any follow-up work-up for the cause of [Catherine's] distended abdomen." In short, rather than being a refinement of the allegations in previous complaints, the restated complaint contains drastic departures from the allegations in the original complaint concerning both the cause of Catherine's initial injuries and the conduct of Affinity and Dr. Wade that allegedly caused Catherine's abdominal compartment syndrome.

In Georgia Casualty & Surety Co. v. White, 582 So. 2d 487 (Ala. 1991), "this Court held that the amended complaint did not relate back under Rule 15(c)(2)" "[b]ecause the amended complaint addressed an incident 'distinct in time' and 'distinct in conduct alleged to be wrongful.'" Prior, 959 So. 2d at 1096 (quoting White, 582 So. 2d at 492). In Prior, the Court likewise concluded that an amended complaint was barred under Rule 15(c)(2) "because it addresses different behavior that took place at a different time from the behavior alleged to be wrongful in the original

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complaint, as amended." Prior, 959 So. 2d at 1096. Kenneth attempts to avoid those precedents by highlighting that the conduct alleged in the restated complaint allegedly occurred within the same general time frame as the conduct alleged in the original complaint. See, e.g., Kenneth's respondent's brief, p. 26 ("[A]ll versions [of Kenneth's complaint] alleged that Defendants' negligent failure to provide proper medical care during the three-day window caused Catherine's abdominal compartment syndrome, which caused her death."). But the occurrence described in the original complaint that allegedly led to Catherine's abdominal compartment syndrome is wholly different and happened at a different time than the occurrence described in the restated complaint. In the original complaint, the lacerations that allegedly eventually led to Catherine's condition occurred during the surgery on March 21, 2019. In the restated complaint, the fall that allegedly resulted in a perforated viscus occurred on March 24, 2019. Like the situations in White and Prior, Kenneth's restated complaint clearly addresses conduct distinct in kind and in time from the conduct alleged in his original complaint (and five subsequent amended complaints). Therefore, Kenneth's restated complaint cannot relate back to his original complaint.

IV. Conclusion

Under the language in Rule 15(c)(2), Ala. R. Civ. P., and according to the previous precedents discussed in this opinion, we conclude that Kenneth's restated complaint does not relate back to the time of filing of his original complaint. Consequently, the restated complaint is barred by the expiration of the two-year limitations period in the wrongful-death statute. Therefore, the circuit court had no discretion to do anything other than to grant the motions to dismiss the restated complaint filed by Affinity and Dr. Wade. Accordingly, Affinity's and Dr. Wade's mandamus petitions are granted, and the writs of mandamus are hereby issued directing the Jefferson Circuit Court to vacate its November 17, 2021, orders denying Affinity's and Dr. Wade's motions to dismiss the restated complaint and to enter orders granting the motions.

1210160 -- PETITION GRANTED; WRIT ISSUED.

1210191 -- PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, Stewart, and Mitchell, JJ., concur.