

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CA-01338-COA

DARRYL T. KEYS

APPELLANT

v.

REHABILITATION, INC.

APPELLEE

DATE OF JUDGMENT: 11/09/2021
TRIAL JUDGE: HON. ELEANOR JOHNSON PETERSON
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT,
FIRST JUDICIAL DISTRICT
ATTORNEYS FOR APPELLANT: WILLIAM H. JONES
TAYLOR RHUE BRINKLEY
ATTORNEYS FOR APPELLEE: ROBERT DOUGLAS MORGAN
CHRISTOPHER HERBERT COLEMAN
DONALD SCOTT MURRAY
NATURE OF THE CASE: CIVIL - PERSONAL INJURY
DISPOSITION: AFFIRMED - 11/01/2022
MOTION FOR REHEARING FILED:

BEFORE WILSON, P.J., GREENLEE AND LAWRENCE, JJ.

GREENLEE, J., FOR THE COURT:

¶1. Darryl Keys appeals from the judgment of the Hinds County Circuit Court dismissing certain claims against Rehabilitation Inc. as barred by a statute of limitations. After review, we affirm the circuit court's judgment.

FACTS AND PROCEDURAL HISTORY

¶2. On February 24, 2017, Darryl Keys was injured while working as an aircraft mechanic for the Mississippi Military Department in Gulfport, Mississippi. He subsequently was referred to Dr. Richard Clatterbuck, a neurosurgeon who previously had treated him for spinal issues. On July 3, 2017, Dr. Clatterbuck told Keys that he needed surgery. According

to Keys, Dr. Clatterbuck said that the surgery was needed on an urgent basis and that he would set aside three days that week to perform the surgery.

¶3. Two days after Keys' appointment, on July 5, 2017, Dr. Clatterbuck's office sent a pre-certification request for surgery to Cochran Cannon Management Services Inc. ("CCMSI").¹ The pre-certification request indicated that Dr. Clatterbuck had scheduled Keys' surgery for July 13, 2017. CCMSI submitted the request to Rehabilitation Inc. ("Rehabilitation"), and Rehabilitation submitted the request to The Reny Company ("Reny").² On July 10, 2017—while the request for surgery was pending—Keys fell at his home and became a quadriplegic. On the same day, Keys' request for surgery was denied.³ However, on July 12, 2017, the request for surgery was reconsidered. Ultimately, CCMSI approved the request, and Dr. Clatterbuck's office was notified of the decision.

¶4. Approximately one and a half years later, in March 2019, Keys filed a petition to controvert with the Mississippi Workers' Compensation Commission. Then, in November 2019, Keys and his employer—the Mississippi Military Department—submitted an agreed order stipulating that Keys' fall on July 10, 2017—which resulted in his quadriplegia—was

¹ Keys' employer seemingly contracted with Mississippi State Agencies Self-Insured Worker's Compensation Trust ("the Trust") to provide workers' compensation coverage, and Trust contracted with CCMSI to process workers' compensation claims.

² According to Keys, CCMSI contracted with Rehabilitation to perform and provide medical services; however, Rehabilitation asserts that it made recommendations to CCMSI concerning the necessity or appropriateness of medical services. Additionally, Reny performed or was involved with utilization reviews.

³ In a letter from Rehabilitation to Dr. Clatterbuck, Rehabilitation stated, "Our review of the request for precertification did not meet the medical necessity for this procedure/service."

causally related to and resulted from his work injury on February 24, 2017. Under the agreed order, “the Employer and Carrier [were] responsible for all reasonable and necessary medical treatment for [Keys’] injuries, including his quadriplegia”⁴

¶5. Approximately one and a half years after filing the petition to controvert, on September 3, 2020, Keys filed a complaint in the Hinds County Circuit Court against the Trust, CCMSI, Rehabilitation, Reny, and Safety National Casualty Corporation alleging (1) “bad faith failure to pay wage benefits,” (2) “conspiracy to deny and terminate [his] worker[s’] compensation benefits,” (3) “abuse of process,” (4) “bad faith failure to follow utilization review rules, regulations, and time lines,” (5) “bad faith interference with doctor/patient relationship,” (6) “sloppy, irresponsible claims handling,” (7) “interference with doctor/patient relationship and clandestine claims activities,” and (8) “failure to timely comply with utilization rules, regulations, and procedures.”

¶6. Among other things, Keys alleged the defendants had willfully and openly disregarded their obligations under the “utilization review rules” to respond to his request for surgery within two business days, and the failure to timely respond resulted in his quadriplegia. Keys further alleged that he could have had the surgery between July 7 and July 10, 2017, through his private health insurance carrier had the request for surgery been timely denied.

¶7. On September 28, 2020, Keys filed an amended complaint alleging that his paralysis was “not a result nor product of his work related accident or injury but a result of the willful and wanton negligent and irresponsible claims handling activities of the [d]efendants in

⁴ The record indicates that the agreed order was entered by the Mississippi Workers’ Compensation Commission.

denying and delaying needed and reasonable medical care.”

¶8. Subsequently, Rehabilitation filed an answer and affirmative defenses and a motion to dismiss. Rehabilitation requested that the circuit court dismiss the causes of action that were based on the alleged failure to timely respond to the request for surgery, which included the claims for “bad faith failure to follow utilization review rules, regulations and time lines,” “sloppy, irresponsible claims handling,” and “failure to timely comply with utilization rules, regulations and procedures.” Rehabilitation asserted that the claims were barred by the three-year statute of limitations, Miss. Code Ann. § 15-1-49 (Rev. 2019).⁵

¶9. In November 2021, after a hearing, the circuit court granted Rehabilitation’s motion to dismiss. The court noted that “[Keys] contends his claims . . . were not viable until he exhausted his administrative remedies under the [Workers’ Compensation Law] (“the Act”).” However, the court found that Rehabilitation was not Keys’ employer or insurance carrier, Rehabilitation did not participate in the underlying workers’ compensation case, and Keys’ claims fell outside the purview of the Act. Further, the circuit court found that Keys’ specific negligence-based claims were barred by the three-year statute of limitations. Accordingly, the circuit court dismissed the following claims: “conspiracy to deny and terminate plaintiff’s workers’ compensation benefits”; “bad faith failure to follow utilization review rules, regulations and time lines”; “bad faith interference with doctor/patient relationship”; “sloppy,

⁵ Subsequently, Keys filed a “second and post production of documents response,” and Rehabilitation filed a motion to strike the pleading. Keys also filed a “Motion to Dismiss [the Trust], and [Reny], and to Amend [the Complaint],” and Rehabilitation filed a response in opposition. The record indicates that the Trust, Reny, and Safety National Casualty Corporation were dismissed from the lawsuit.

irresponsible claims handling”; “interference with doctor/patient relationship, and clandestine claims activities”; and “failure to timely comply with utilization rules, regulations and procedures.” A supplemental order certifying the order granting Rehabilitation’s motion to dismiss as final was entered, and Keys appealed.

DISCUSSION

¶10. Keys claims that the circuit court erred by finding that his claims were negligence-based claims and that the claims were barred by the statute of limitations. “The circuit court’s grant of a motion to dismiss based upon the statute of limitations presents a question of law to which this Court applies de novo review.” *Prystupa v. Rankin Cnty. Bd. of Supervisors*, 339 So. 3d 147, 154 (¶24) (Miss. Ct. App. 2022) (quoting *McNair v. J.F.M. Inc.*, 323 So. 3d 1154, 1157 (¶7) (Miss. Ct. App. 2021)).

¶11. In his appellate brief, Keys argues that his complaint was “firmly grounded in allegations of the independent tort of bad faith” He specifically cites his claims for “bad faith failure to follow utilization review rules, regulations and time lines” and “sloppy, irresponsible claims handling,” and seemingly references his claim for “failure to timely comply with utilization rules, regulations and procedures.”

¶12. Keys’ claim for “bad faith failure to follow utilization review rules, regulations and time lines” alleged that his quadriplegia could have been avoided had the defendants responded to the request for surgery within two business days. Keys further alleged that the defendants knew that his request for surgery was urgent, but they willfully and openly disregarded their obligation to timely respond. Similarly, Keys’ claim for “sloppy,

irresponsible claims handling” alleged that the defendants ignored their obligation to respond to the request for surgery within two business days. Finally, Keys’ claim for “failure to timely comply with utilization rules, regulations and procedures” alleged that he was confined to a wheelchair because the defendants did not timely respond, and he specifically alleged that “his paralysis [was] not a result nor product of a work related accident or injury but a result of the willful and wanton negligent and irresponsible claims handling activities of the [d]efendants in denying and delaying needed and reasonable medical care.”

¶13. The circuit court found that Keys’ claims were negligence-based claims and applied the three-year statute of limitations set forth in Mississippi Code Annotated section 15-1-49.⁶ The circuit court noted Keys’ allegation that he fell and became a quadriplegic on July 10, 2017, but did not file his complaint until September 2020—more than three years later.

¶14. Keys seemingly argues that his causes of action did not accrue until after the agreed order was entered in the underlying workers’ compensation case and that he timely filed the complaint after exhausting his administrative remedies.

¶15. In support of his argument, Keys relies on *Hardaway v. Howard Industries Inc.*, 211 So. 3d 718 (Miss. Ct. App. 2016). In *Hardaway*, this Court acknowledged that “a claimant may have an independent cause of action in tort for bad faith refusal to pay workers’ compensation benefits when an insurance carrier or self-insured employer denies benefits without a legitimate or arguable basis, commits a willful or malicious wrong, or acts with

⁶ This section provides, “All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.” Miss. Code Ann. § 15-1-49(1).

gross and reckless disregard for the claimant’s rights.” *Id.* at 722 (¶16). This Court also acknowledged that “the claimant must obtain a final judgment from the Commission that he is entitled to benefits—i.e., he must exhaust his administrative remedies—before instituting an action for the alleged bad faith denial of those benefits.” *Id.*

¶16. However, the causes of action at issue in this case did not stem from a denial of workers’ compensation benefits. Rather, Keys repeatedly alleged that the defendants’ failure to timely respond to the request for surgery caused Keys to become a quadriplegic. As such, the outcome of the workers’ compensation case—whether Keys was entitled to worker’s compensation benefits—was irrelevant. Additionally, as noted by the circuit court, Rehabilitation did not participate in the workers’ compensation case.⁷

¶17. Dr. Clatterbuck’s office submitted the request for surgery on July 5, 2017. The request for surgery was initially denied on July 10, 2017, but the decision was reconsidered and approved on July 12, 2017. Once the surgery was approved, any claim for delay had accrued, and Keys had three years to file suit.⁸ However, Keys did not file his complaint until September 2020, after the statutory limitations period had expired. For these reasons, we agree with the circuit court’s finding that Keys’ claims were barred by the statute of limitations, and we affirm the circuit court’s judgment.

¶18. **AFFIRMED.**

⁷ The parties to the agreed order were Keys and his employer—“Military Department - Gulfport, A Member of the Mississippi State Agencies W.C. Trust.”

⁸ In *Patrick v. Wal-Mart Inc.—Store # 155*, 681 F.3d 614, 620 (5th Cir. 2012), the Fifth Circuit Court of Appeals held that “a claim for bad faith in denying particular benefits is exhausted when an award of those benefits is final.”

**BARNES, C.J., CARLTON AND WILSON, P.JJ., WESTBROOKS,
McDONALD, LAWRENCE, McCARTY AND SMITH, JJ., CONCUR. EMFINGER,
J., NOT PARTICIPATING.**