

CASE NO. A09-1044

STATE OF MINNESOTA

IN COURT OF APPEALS

LONNIE SINGELMAN,

APPELLANT,

vs.

ST. FRANCIS MEDICAL CENTER,

RESPONDENT.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE

Appellant Lonnie Singelman alleges that on July 12, 2004 she was injured when a nurse employee of Respondent St. Francis Medical Center negligently inserted an intravenous needle into her left arm. Respondent denied liability. Appellant alleges that on July 7, 2008 she mailed her summons and complaint to the Wilkin County Sheriff requesting that he make service upon the appropriate agent of Respondent. The Wilkin County Sheriff's Office received the summons and complaint on July 17, 2008, five days after the statute of limitations expired.

Respondent moved for summary judgment because Appellant failed to commence her lawsuit within the statute of limitations. Wilkin County District Court Judge Gerald Seibel heard this motion on March 3, 2009. On March 10, 2009 Judge Seibel issued an order stating that the Respondent and Appellant had the opportunity to submit affidavit or deposition evidence of the date that the Wilkin County Sheriff received Appellant's summons and complaint. Respondent submitted an affidavit of Wilkin County Sheriff's Department Secretary to Civil Process Patricia Kloster.

On April 15, 2009 Judge Seibel issued an Order and Memorandum granting Respondent's Motion for Summary Judgment, holding that Appellant failed to commence her lawsuit within the four-year statute of limitations. Appellant appealed this Order.

STATEMENT OF THE ISSUES

1. Is Respondent entitled to summary judgment as a matter of law when Appellant fails to commence her medical malpractice lawsuit within the four-year statute of limitations?

The trial court held in the affirmative and granted Respondent's motion for summary judgment, dismissing the case with prejudice.

Apposite Cases:

Johnson v. Husebye, 469 N.W.2d 742 (Minn. Ct. App. 1991)

Tackleson v. Abbott-Northwestern Hospital, Inc., 415 N.W.2d 733 (Minn. Ct. App. 1988)

2. Did disputed material fact issues concerning when the Wilkin County Sheriff received Appellant's summons and complaint preclude Respondent's motion for summary judgment?

The trial court held in the negative.

Apposite Cases:

Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323 (Minn. 1993)

DLH, Inc. v. Russ, 566 N.W.2d 60 (Minn. 1997)

3. Is Respondent equitably estopped from asserting the statute of limitations defense?

The trial court granted Respondent's motion for summary judgment based on the statute of limitations argument and rejected Appellant's contention that Respondent was estopped from asserting a statute of limitations defense.

Apposite Cases:

Ridgewood Development Co. v. State, 294 N.W.2d 288 (Minn. 1980)

Tackleson v. Abbott-Northwestern Hospital, Inc., 415 N.W.2d 733 (Minn. Ct. App. 1988)

STATEMENT OF FACTS¹

A. Appellant's Alleged Medical Malpractice Injury Occurs On July 12, 2004.

Appellant Lonnie Singelman (Singelman) alleges that on July 12, 2004 she was admitted to Respondent St. Francis Medical Center (St. Francis) for same day surgery repair of a reducible, recurrent, right inguinal hernia. Appellant's Appendix (AA)-2, ¶ 2. As part of the "pre-operative procedure an IV was inserted for fluid administration." Id. Singelman testified that a nurse employee of St. Francis negligently inserted the IV needle into her left arm. Respondent's Appendix (RA)-62. Singelman testified that on the morning of her surgery the nurse attempted to insert the IV needle in her left arm, failed to hit the vein, moved the needle and hit a nerve. RA-62. Singelman testified that when the nurse hit the nerve with the IV needle her hand "clawed up" and she felt pain throughout her entire left arm. RA-63. According to Singelman, the nurse removed the IV needle immediately. Id. The nurse then allegedly rubbed Singelman's hand in an attempt to get it to return to a normal position. Id. The nurse did not make another attempt to insert the IV needle. RA-63-64.

¹ Appellant's "statement of the case and facts" contains several erroneous assertions. For example, Appellant alleges that the expiration of the statute of limitations was July 12, 2009 and that other relevant events occurred in 2009. Appellant's Brief, p. 2. This is incorrect. It is not disputed that the four-year medical malpractice statute of limitations expired on July 12, 2008. Moreover, there are no material facts that occurred in 2009. Appellant's brief also fails to include a wealth of material facts relevant to this appeal. Respondent's brief supplies the material facts omitted by Appellant. Finally, Appellant has not included the mandatory addendum pursuant to Rule 128.02, subdivision 3 and the appendix fails to include all documents mandated by Rule 130.01. Therefore, Respondent has filed an appendix with the missing documents pursuant to Rule 130.02.

Singelman was then transported to the surgery room for her procedure. A different nurse, who she does not recall, inserted the IV needle in her right arm, without incident. RA-63-64. Singelman testified that at this time the only doctor in the room was Dr. Chambers. RA-64. She did not tell Dr. Chambers about the alleged failed attempt to insert the IV needle. Id.

The sole basis of Singelman's complaint and cause of action stems from the alleged negligent insertion of the IV needle on July 12, 2004. AA-2, ¶ 4. She specifically alleges that St. Francis was negligent in the following ways:

1. Choosing a high risk area of her anatomy for an IV insertion site;
2. Negligently inserting the IV needle into her left hand; and
3. Failing to document and promptly and properly follow up on complaints of pain after the IV insertion was attempted.

Id. Singelman was asked in interrogatories to list the things that St. Francis either "wrongfully did or wrongfully failed to do resulting in [her alleged] injury." RA-25. Singelman responded that St. Francis failed "to insert IV needle properly, hitting the nerve in my arm, causing my hand to lock in a claw-like position." Id.

Counsel for Singelman submitted an affidavit pursuant to Minnesota Statute Section 145.682(4).² RA-45. The affidavit, as it must, details the acts of alleged negligence.

Mrs. Singelman was injured because an intravenous needle was negligently inserted into a nerve in her left arm and further injury may have occurred when the nurse massaged her muscles. Negligence, again occurred when the nurse failed to communicate this injury to Mrs. Singelman's physician and request guidance in how to treat the nerve injury. The nurse deprived Mrs. Singelman of appropriate care by withholding information from the primary physician and other (sic) care givers. Finally, negligence occurred in the failure of the nurse to document the time and location of each venipuncture attempt and in failing to record the response of the patient to each of the venipunctures.

RA-50, ¶ 9. There was no dispute before the trial court and there is no dispute now that Singelman's alleged injury occurred on July 12, 2004 and the statute of limitations began to run at that time.

B. Beginning April 5, 2007, Appellant Makes Settlement Demands And Repeated Threats To Commence A Lawsuit Against Respondent; On October 11, 2007, More Than Nine Months Before the Statute of Limitations Expires, Appellant Ceases All Communication With Respondent.

On April 5, 2007, more than 16 months before the statute of limitations expired, Singelman's attorney contacted the insurance company for St. Francis explaining that he

² Minnesota Statute Section 145.682 deals with the certification of expert review and affidavits in medical malpractice cases. The affidavit submitted by counsel in this case is intended to comply with Subdivision 4 of the statute. That provision provides that the affidavit required by subdivision 2 (of the statute) clause (2), must be signed by each expert listed in the affidavit and by the Plaintiff's attorney and gave the identity of each person whom Plaintiff expects to call as an expert witness at trial to testify at trial with respect to the issues of malpractice or causation, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Minn. Stat. § 145.682, Subd. 4(a).

had “been retained by Lonnie and Bob Singelman to represent them in their claim against St. Francis Health Care, Breckenridge, Minnesota, arising out of the injury she sustained on July 12, 2004.” RA-73. In response, on April 10, 2007 Ted Ford, a claim representative, wrote Singelman’s attorney explaining that there is no evidence that St. Francis caused an injury and explained that “additional information” must be provided documenting Singelman’s injury as the existing medical records are “insufficient to prove her claim against St. Francis.” RA-74. On April 19, 2007 Singelman’s attorney wrote Mr. Ford stating “perhaps you can enlighten me with an alternative cause for my client’s injury.” RA-76.

On July 11, 2007, more than one year before the statute of limitations would expire, Singelman’s attorney wrote Mr. Ford again explaining that during this time he had not “been sitting idly by waiting” for the case to develop. RA-77. Rather, Singelman’s attorney wrote that he expects to be “able to make a settlement demand” shortly after the receipt of additional documents. Id. Singelman’s counsel also inquired as to St. Francis’s willingness to arbitrate, whether St. Francis had obtained local counsel and their intentions on the same and any preferences for a potential arbitrator. Id. Six days later, on July 17, 2007 Mr. Ford wrote Singelman’s counsel identifying counsel for St. Francis and explaining that he would be in touch with St. Francis’ attorney to “discuss potential arbitrators for this matter.” RA-79. On July 20, 2007 Singelman’s counsel wrote Mr. Ford requesting information he described as “clearly discoverable in litigation.” RA-

80-81. He further inquired if it would be “necessary for [him] to start suit in order to obtain them.” RA-80.

On July 24, 2007, Mr. Ford wrote to Singelman’s counsel identifying counsel for St. Francis and explaining that counsel would respond to their request for information. RA-82. On September 4, 2007 counsel for St. Francis wrote counsel for Singelman indicating that he had “been retained by St. Francis and CHI relative to the lawsuit involving [Appellant] Lonnie Singelman.” RA-83. On October 8, 2007 Singelman’s counsel wrote counsel for St. Francis explaining that if he did not receive requested documentation he would “start suit.” RA-84. On October 11, 2007 counsel for St. Francis wrote counsel for Singelman disclosing certain information previously requested and indicating that it was in the process of gathering additional information more recently requested. RA-85. Counsel for St. Francis further explained that documents protected by the peer review process would not be disclosed. Id.

On or about October 16, 2007, nine months before the statute of limitations expired, Singelman’s counsel responded to this letter.

Thank you for your letter of October 11, and enclosures. However, simply receiving the materials requested of Catholic Health Initiative Claim Coordinator Ford back in April, is not enough to comply with the ultimatum contained in my letter of October 8.

Please reference that letter for the additional materials necessary to forestall suit.

RA-116. St. Francis did not respond to this demand. This letter is the last communication from Appellant’s counsel to Respondent.

C. The Wilkin County Sheriff's Office Receives Appellant's Summons and Complaint On July 17, 2008, Five Days After The Four-Year Medical Malpractice Statute Of Limitations Expires.

Singelman attempted but failed to commence her lawsuit through service of the summons and complaint via the Wilkin County Sheriff. In a letter dated July 7, 2008 Singelman's counsel wrote to the Wilkin County Sheriff requesting that the Sheriff "make service upon the appropriate agent for service for St. Francis Medical Center." RA-87 and AA-10-11. This letter and the summons and complaint were mailed to the Wilkin County Sheriff. The Wilkin County Sheriff received the letter, along with the summons and complaint, on July 17, 2008. AA-10-11 and 45-49. Specifically, Wilkin County Sheriff Thomas Matejka documents that the "original letter dated July 7, 2008 from Miller, Norman & Associates, Ltd.," is stamped on the reverse side, which "indicates the date on which it was received in [the Wilkin County Sheriff's Department Office]." RA-57.

In support of its motion for summary judgment, St. Francis also submitted sworn testimony of Patricia Kloster from the Wilkin County Sheriff's Department, which undisputedly confirms that the summons and complaint was not received until July 17, 2008. AA-45-49. Ms. Kloster works at the Wilkin County Sheriff and has worked there for more than 15 years. AA-45. She is the Secretary to Civil Process and the Terminal Agency Coordinator to the Minnesota Bureau of Criminal Apprehension. Id. Civil Process is responsible for receiving and effecting service of civil summons and complaints. As the Secretary to Civil Process, Ms. Kloster's responsibilities and duties

include the following: retrieving and opening daily mail, including all documents sent to Wilkin County Sheriff for service, dating and stamping documents received in the mail and creating Civil Process documents to document when mail is received by the Wilkin County Sheriff. AA-45-46. As the Secretary of Civil Process, Ms. Kloster will stamp and date all correspondence so that the Wilkin County Sheriff has a record of when mail is received. This includes any correspondence requesting service of a civil summons and complaint. This process of documenting when mail is received is a regularly conducted business activity and the policy of the Wilkin County Sheriff. AA-45-46.

Mail sent to the Wilkin County Sheriff is delivered to the post office in Breckenridge. AA-46. Sheriff Matejka will pick up the mail on his way to work at approximately 8:00 a.m. If Sheriff Matejka is not working, Ms. Kloster picks the mail up on her way to work at 8:00 a.m. Id. The mail is only picked up once a day during the weekdays. Once the mail is picked up in the morning it is delivered to her for opening and to stamp the date received. Id. The placement of the date-received stamp depends on the room available on the document. Id.

Attached to Ms. Kloster's Affidavit was Exhibit A, a true and correct copy of the letter from Singelman's attorney dated July 7, 2008. AA-46. Ms. Kloster made the handwriting on the lower left corner of Exhibit A. This notation was made because the letter requested service of the documents, including Singelman's summons and complaint, to be made before July 11, 2008. However, the Wilkin County Sheriff's Department did not receive this letter and Singelman's summons and complaint until July

17, 2008. Id. Attached as Exhibit B to Ms. Kloster's Affidavit is a true and correct copy of the back of Exhibit A, the letter from Singelman's attorney to the Wilkin County Sheriff's Department. AA-46-47. Ms. Kloster testified that she has a specific recollection of receiving this letter in the mail on July 17, 2008 and date stamping the back of the same, marked Exhibit B, as July 17, 2008. AA-46-47. The date stamp procedure, according to Ms. Kloster, was performed as part of a regularly conducted business activity of the Wilkin County Sheriff's Department. AA-46-47.

Attached to Ms. Kloster's Affidavit as Exhibit C is a true and correct copy of the Wilkin County Sheriff's Civil Process document relative to Singelman's summons and complaint. AA-47. Ms. Kloster, as part of a regularly conducted business activity, made the handwriting on this document. Ms. Kloster testified that when a request for action, such as service of a summons and complaint, is received by the Wilkin County Sheriff, a Civil Process document is generated that records when documents were received, the time they were received, from whom the documents were received, the caption of any case involved, the date of service, who served the documents, the location of the service, the time of the service and any relevant remarks. Id. According to Ms. Kloster, the number "164" means that Exhibit C was the 164th document received requesting action by the Wilkin County Sheriff in 2008. Ms. Kloster testified that she generated Exhibit C in response to the request from Singelman's attorney in Exhibit A for service of the summons and complaint. AA-47. Ms. Kloster testified that Exhibit C confirms that the Wilkin County Sheriff received Singelman's summons and complaint on July 17, 2008.

Id. Ms. Kloster further testified that there is “no reasonable chance that this document was not received on July 17, 2008 or that the document was lost and later found.” AA-47. Ms. Kloster testified that mail sent to the Wilkin County Sheriff is either delivered to her by the Sheriff on a daily basis or she picks up the same on a daily basis during the week. AA-47-48. Ms. Kloster testified that had Singelman’s summons and complaint been received in the mail earlier than July 17, 2008, the stamp for the date received would reflect that date. AA-48.

D. Wilkin County District Court Judge Gerald Seibel Grants Respondent’s Motion for Summary Judgment Holding That There Are No Disputed Material Facts and Respondent Is Entitled to Judgment As A Matter Of Law Because Appellant Failed To Commence Her Medical Malpractice Lawsuit Within The Four-Year Statute Of Limitations.

St. Francis moved for summary judgment on or about January 30, 2009. AA-13. Wilkin County District Court Judge Seibel heard this motion on March 3, 2009. AA-52. St. Francis argued that Singelman’s complaint was barred because she failed to commence her lawsuit pursuant to Minnesota Rules of Civil Procedure 3.01(c) within the four-year medical malpractice statute of limitations period. See generally, RA-9-18. In response, Singelman argued that she properly commenced a lawsuit pursuant to Rule 3.01(c) by simply mailing the summons and complaint before the expiration of the statute of limitations, that questions of material fact precluded summary judgment and that St. Francis was estopped from asserting the statute of limitations defense. RA-65-68. Singelman did not dispute that her medical malpractice cause of action accrued on July

12, 2008. RA-98. St. Francis addressed Singelman's responses in its Reply Memorandum in Support of Motion for Summary Judgment. RA-98-112.

On March 10, 2009 Judge Seibel issued an Order. RA-2. Judge Seibel explained that during "the course of [oral] argument it became apparent that the parties were unable to fully present affidavit evidence on the statute of limitations issue because, although they had some written documentation from the sheriff's office relating to the delivery of the summons and complaint, this was not in the form of an affidavit or sworn testimony and is thus hearsay." Id. Judge Seibel wrote that he was "going to grant the parties a limited extension to supplement their affidavits or obtain a deposition from personnel at the sheriff's office pursuant to Rule 56.06 of the Minnesota Rules of Civil Procedure." Id. Therefore, Judge Seibel ordered that the parties had until April 15, 2009 to file with the Court and serve upon opposing counsel supplemental affidavits or deposition testimony relating to information concerning delivery of the summons and complaint to the Wilkin County Sheriff. RA-2-3. Judge Seibel wrote that the extension to file supplemental affidavits was specifically limited to information sought from the Sheriff's office on this issue. Id.

On April 2, 2009 St. Francis submitted the affidavit of Patricia Kloster. See generally, AA-45. Ms. Kloster's sworn testimony was already fully discussed in this brief. See supra, pp. 8-11 (discussing Ms. Kloster's testimony). In short, Ms. Kloster testified that she has a specific recollection of receiving Singelman's summons and complaint on July 17, 2008 and that she date stamped the same as part of her duties and

responsibilities at the Wilkin County Sheriff's Department. AA-45-48. Singelman filed the affidavit of a woman named Renae Ingersoll, ostensibly explaining how mail is picked up and delivered. AA-43.

On or about April 15, 2009 Judge Seibel issued an order granting St. Francis' Motion for Summary Judgment. AA-52. Judge Seibel held, in relevant part, that there were no disputed material facts prohibiting summary judgment and that St. Francis was entitled to judgment as a matter of law. AA-53-54. Specifically, Judge Seibel held that the four-year medical malpractice statute of limitations against St. Francis expired on July 12, 2008. AA-53. It was not disputed that the alleged medical malpractice injury was that of the negligent needle insertion on July 12, 2004. Therefore, Judge Seibel held that "it is clear that the four-year statute of limitations ran on July 12, 2008." Id.

Judge Seibel further held that Singelman failed to commence her lawsuit within the statute of limitations period. Id. Judge Seibel wrote that a civil action is commenced "against each defendant when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on the defendant or the first publication thereof is made" pursuant to Minnesota Rule of Civil Procedure 3.01(c). Judge Seibel held that commencing an action pursuant to this Rule was intended to "accommodate a busy sheriff, not a tardy plaintiff." AA-53 citing Johnson v. Husebye, 469 N.W.2d 742, 745 (Minn. Ct. App. 1991). Judge Seibel held that the affidavits "submitted by the parties clearly show that the summons and complaint were not delivered to the Wilkin County

Sheriff's Department until July 17, 2008; five days after the statute of limitations had run." AA-53.

Judge Seibel also addressed Singelman's allegation that disputed material facts prohibited summary judgment. Judge Seibel rejected this assertion, holding that St. Francis' "affidavits conclusively demonstrate that the letter and Summons and Complaint were not received or delivered to the sheriff's department until after the statute of limitations had run." AA-54. Judge Seibel wrote that the issue is not "when the Summons and Complaint should have been delivered but rather when they were actually received by or delivered to the Sheriff's office." Id. Because the summons and complaint were not delivered to the Sheriff until after July 12, 2008, Judge Seibel held that the claim "is barred by the statute of limitations and [St. Francis] is thus entitled to judgment as a matter of law." Id.

On or about June 11, 2009 Singelman appealed the trial court's order. See generally, Appellant's Notice to Court of Appeals dated June 11, 2009. In her appeal, Singelman advances the identical arguments already rejected by the trial court. First, Singelman alleges that the trial court impermissibly resolved material disputed facts to justify summary judgment. Appellant's Brief, p. 3. Second, Singelman argues that "delivery" of the summons and complaint to the Wilkin County Sheriff was effective upon mailing pursuant to Minnesota Rule of Civil Procedure 3.01(c).³ Id. at 5-6. Finally,

³ For the sake of clarity in analysis, this argument is addressed first in Respondent's Brief, followed by Singelman's alleged material fact dispute argument and then her estoppel argument.

Singelman alleges that St. Francis should be estopped from asserting the statute of limitations defense. Id. at 6-7.

Singelman's brief provides little to no substantive legal analysis or recitation to the material facts of this case. This Court should affirm the trial court's holding and find that Singelman failed to commence her lawsuit within the medical malpractice four-year statute of limitations. As a result, her lawsuit is barred as a matter of law.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD OF REVIEW

“When reviewing a trial court's grant of summary judgment, the Court of Appeals determines (1) whether there are any genuine issues of material fact; and (2) whether the lower court erred in its application of the law.” Offerdahl v. Univ. of Minn. Hosps. & Clinics, 426 N.W.2d 425, 427 (Minn. 1988). In reviewing the record, the court must view the evidence in the light most favorable to the party against whom summary judgment was granted. Id. The Court of Appeals reviews the district court's grant of summary judgment in favor of St. Francis to determine whether any issues of genuine fact remains or whether it erred in its application of the law. See Offerdahl, 426 N.W.2d at 427.

To defeat a motion for summary judgment, the “nonmoving party must offer significant probative evidence tending to support its complaint.” Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989) (citation omitted). No genuine issue of material fact exists “[w]here the record taken as a whole could not lead a rational

trier of fact to find for the nonmoving party.” DLH Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). The Court of Appeals will affirm a grant of summary judgment if it can be sustained on any ground. Winkler v. Magnuson, 539 N.W.2d 821, 828 (Minn. Ct. App. 1995). Generally, the appellate court will affirm even though it may have reached a different conclusion. Cable Communications Bd. v. Nor-West Cable Communications P'ship, 356 N.W.2d 658, 669 (Minn. 1984).

II. THE TRIAL COURT CORRECTLY HELD THAT APPELLANT FAILED TO COMMENCE HER MEDICAL MALPRACTICE LAWSUIT WITHIN THE FOUR-YEAR STATUTE OF LIMITATIONS.

Singelman argues that merely mailing her summons and complaint to the Wilkin County Sheriff satisfied Minnesota Rule of Civil Procedure 3.01(c). Appellant’s Brief, pp. 5-6. Therefore, she theorizes, even if the Wilkin County Sheriff received it after the statute of limitations expired, she nevertheless properly commenced her lawsuit because her attorney placed it in the mail before the statute of limitations expired. This argument is legally incorrect. As Judge Seibel correctly held, the “delivery” requirement in Rule 3.01(c) mandates that the Sheriff physically receive the summons and complaint prior to the expiration of the statute of limitations. Here, the Wilkin County Sheriff did not receive Singelman’s summons and complaint until five days after the statute of limitations expired. Therefore, because Singelman failed to deliver her summons and complaint to the Wilkin County Sheriff pursuant to Rule 3.01(c) prior to the expiration of the statute of limitations, her claim is barred as a matter of law.

A. Appellant's Cause Of Action For Medical Malpractice Expired On July 12, 2008.

Singelman does not dispute that her cause of action for medical malpractice commenced on July 12, 2004 and expired on July 12, 2008.⁴ Singelman's claims for medical malpractice are predicated on the negligence of an employee of St. Francis. See AA-2-3, ¶ 3 (alleging that St. Francis and its "agents/employees owed" Plaintiff a duty to exercise ordinary care) and ¶ 4 (alleging that St. Francis, "through its agents and employees, breached this duty in numerous ways"). The statute of limitations for respondeat superior claims is the same as the underlying cause of action. Keiser v. Memorial Blood Ctr., 486 N.W.2d 762, 767 (Minn. 1992); D.M.S. v. Barber, 645 N.W.2d 383, 390 (Minn. 2002). Therefore, the applicable statute of limitations to claims against St. Francis based on respondeat superior is the four-year statute of limitations for medical malpractice. Minn. Stat. § 541.076, Subd. 1 (medical malpractice claims are subject to a four-year statute of limitations).

B. Appellant Did Not Deliver Her Summons and Complaint Pursuant To Minnesota Rule Of Civil Procedure 3.01(c) To The Wilkin County Sheriff Until July 17, 2008, Five Days After The Statute Of Limitations Expired.

In Minnesota, an action may be commenced in one of three ways. First, a civil action may be commenced against a defendant when the summons is served upon the defendant. Minn. R. Civ. P. 3.01(a). Second, a civil action may be commenced against a

⁴ Because this is not disputed, St. Francis will not address the same in its brief. However, St. Francis did address this in its arguments to the trial court. RA, pp. 9-13.

defendant “at the date of acknowledgement of service if service is made by mail.” Id. at

(b). Finally, a civil action may be commenced against a defendant:

When the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Id. at (c). Singelman chose to commence her lawsuit under this third option, pursuant to Rule 3.01(c). RA-87. Commencing a lawsuit pursuant to Rule 3.01(c) is intended to accommodate “a busy sheriff, not a tardy plaintiff.” Johnson, 469 N.W.2d at 745. The burden under Rule 3.01(c) is on Singelman “to be diligent.” Id. Here, Singelman failed to “deliver” the summons and complaint to the Wilkin County Sheriff by July 12, 2008, the last day of the statute of limitations.

The letter from Plaintiff’s counsel to the Wilkin County Sheriff is dated July 7, 2008. RA-87. This letter directs service to be made before July 11, 2008. The letter further details that enclosed for service with it was “one copy each of the Summons, Complaint, Minn. Stat. § 145.682(3) affidavit, Interrogatories and Request for Production of Documents, in the above-captioned action.” Id. The Wilkin County Sheriff received Singelman’s counsel’s letter and summons and complaint on July 17, 2008. RA-57 (letter from Wilkin County Sheriff Matejka documenting that Singelman’s summons and complaint were received July 17, 2008), RA-58-59 (Singelman’s letter to Wilkin County Sheriff date stamped July 17, 2008); AA-45-48 (Affidavit of Wilkin County Civil Process secretary Patricia Kloster stating, in part, that Singelman’s summons and complaint were received on July 17, 2008), RA-60 (Wilkin County Civil Process

document number 164 stating that Singelman's summons and complaint were received on July 17, 2008). As a result, Singelman failed to commence her civil action prior to the expiration of the statute of limitations and her medical malpractice claims are barred as a matter of law. Zagaros v. Erickson, 558 N.W.2d 516, 520 (Minn. Ct. App. 1997) (holding that action for medical malpractice barred as matter of law when not commenced within statute of limitations period). Indeed, as the Supreme Court held in Carlson v. Hennepin County when discussing Rule 3.01(c), "if a plaintiff's delivery of papers to the sheriff is timely, the action is valid even if the sheriff doesn't actually serve them until 60 days later." (Emphasis added) 497 N.W.2d 50, 56 (Minn. 1992). Therefore, if delivery is not timely, the action is not valid.

The word "delivered" in Rule 3.01(c) is not defined. By statute in Minnesota, words and phrases are construed according to the "their common and approved usage." Minn. Stat. § 645.08; see also Minn. Stat. § 645.001 (applying statutory construction canons to Rules). The relevant definition of the word "deliver" is "to take and to hand over to or leave for another." <http://www.merriam-webster.com/dictionary/deliver>. This definition requires the physical act of effecting actual receipt of the summons and complaint to the Sheriff. Thus, to "deliver" the summons and complaint to the Wilkin County Sheriff's Office and successfully commence her lawsuit pursuant to Minnesota Rule of Civil Procedure 3.01(c), Singelman was required to effect actual receipt of the summons and complaint by July 12, 2008. Singelman's suggestion that simply mailing

her summons and complaint was sufficient to satisfy Rule 3.01(c) is belied by the Rule itself and Minnesota law.

Rule 3.01 contains express provisions for commencing a lawsuit via personal service, mail and delivery to the Sheriff.

Rule 3.01 provides three ways in which a lawsuit may be commenced. The first two options, by personal service or mail, place the burden on the Plaintiff to commence the lawsuit by the summons and complaint physically reaching the Defendant. Further, these options have a mechanism to prohibit the possibility of fraud when the statute of limitations has expired. In other words, if the summons and complaint does not physically reach the Defendant, the lawsuit is not commenced. For example, Rule 3.01(a) provides for commencement of the lawsuit by personal service. Rule 4 governs the service of the summons and complaint. Rule 4 provides various ways to serve individual defendants, corporate defendants and other types of defendants. See Minn. R. Civ. P. 4.03 (describing various methods of personal service). Pursuant to Rule 4.03 (a), service of a summons and complaint requires the Plaintiff to deliver a copy to the “individually personally” or by “leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion then residing therein.” Service on a partnership mandates that the summons and complaint be delivered “to a member or the managing agent of the partnership or association.” Minn. R. Civ. P. 4.03 (b). Service on a corporation, the State or a public corporation requires the summons and complaint to be delivered to the proper agent, as designated by the Rules. See Minn. R. Civ. P. 4.03 (c) (service on corporation), (d) (service on the State) and (e) (service on public corporation).

Thus, the Defendant or its agent must be physically served with a copy of the summons and complaint before the lawsuit is commenced pursuant to Rule 3.01(a).⁵

Rule 3.01(b) has similar requirements. Here, the lawsuit is commenced “at the date of acknowledgement of service if service is made by mail.” Minn. R. Civ. P. 3.01(b). The Rules of Civil Procedure expressly provide that the rule authorizing service by mail permits “use of the mail to deliver the summons and complaint to a defendant within or without the state, and make service effective if the defendant acknowledges receipt of the Summons and Complaint.” Minn. R. Civ. P. 4.05, Advisory Committee Note-1985. Minnesota Rule of Civil Procedure 4.05 governs service of a summons and complaint by mail.

In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage pre-paid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 in return envelope, postage pre-paid, addressed to the sender. If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual.

Had the Supreme Court meant to include “mailing” as an acceptable form of “delivery” of the summons and complaint to the Sheriff under Rule 3.01(c), it could have expressly provided for the same. Instead, the Supreme Court has expressly directed the manner in

⁵ Service by publication, under Rule 4.04, has unique rules not applicable to the present case. Moreover, service by publication is only permissible under certain circumstances, such as where the Defendant has the intent to deceive, cannot be found, or when the action involves marriage dissolution, separate maintenance, real or personal property or mortgage foreclosure. Minn. R. Civ. P. 4.04.

which a civil action may be commenced by mail in 3.01(b) and by delivery to the Sheriff in 3.01(c).

The interpretation Singelman advances relative to Rule 3.01(c) is directly contrary to the strict requirements of Rule 3.01(a) and (b) and produces an absurd result not favored in the law. See Minn. Stat. § 645.17 (1) (the legislature does not intend a result that is absurd, impossible of execution, or unreasonable). Courts are guided by legislative intent when interpreting statutes and rules. Minn. Stat. § 645.16. In relevant part, this Court may consider (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; and (5) the consequences of a particular interpretation. Id. These guidelines weigh heavily in favor of requiring a plaintiff to effect physical receipt of a summons and complaint on the Sheriff before the statute of limitations expires.

Singelman argues that merely mailing her summons and complaint to the Sheriff is sufficient to “deliver” the same within the meaning of Rule 3.01(c). Singelman would have this Court hold that a Plaintiff is not required to effect physical receipt of the summons and complaint on the Sheriff prior to the expiration of the statute of limitations. This assertion is illogical and presents a slippery slope. Adopting Singelman’s argument would mean that a Plaintiff could defeat a motion for summary judgment based on expiration of the statute of limitations by submitting an affidavit of someone alleging

they merely mailed the documents to the Sheriff.⁶ Thus, it would be irrelevant if the Sheriff even received the summons and complaint to commence the lawsuit and a cause of action would never expire so long as someone was willing to claim the summons and complaint was mailed to the Sheriff for service. This result is inconsistent with Minnesota's statutes of limitations that apply to civil claims. Dalton v. Dow Chemical Co., 158 N.W.2d 580, 548 n 2 (Minn. 1968) (the purpose of the statute of limitations is to encourage the fair and effective administration of justice); Entzion v. Illinois Farmers Ins. Co., 675 N.W.2d 925, 928 (Minn. Ct. App. 2004) (a statute of limitations prescribes the period within which a right may be enforced and after which a remedy is unavailable for reasons of private justice and public policy; statute of limitations discourages fraud and endless litigation); Mercer v. Andersen, 715 N.W.2d 114, 119 (Minn. Ct. App. 2006) (statute of limitations is both procedural and substantive because it regulates when a party may file a lawsuit and when a lawsuit is barred).

Singelman's Rule 3.01(c) interpretation is fraught with the same dangers, such as fraud and endless litigation, that the statute of limitations is expressly designed to prevent. Tellingly, Rule 3.01(a) and (b) are drafted to preclude such a result by requiring the Plaintiff to effect physical receipt of the summons and complaint on the Defendant or its agent before a lawsuit is commenced. Rule 3.01(c) should not be construed any less

⁶ Under Singelman's logic, Rule 3.01(c) would be satisfied if the plaintiff handed the summons and complaint to someone that merely agreed to "deliver" the documents to the Sheriff. This would be another absurd result.

stringent in requiring the Plaintiff to effect physical receipt of the summons and complaint with the Sheriff before the statute of limitations expires.

Adopting Singelman's logic would also transfer the burden of commencing a lawsuit from the Plaintiff to the United States Post Office, a courier or whomever Plaintiff selected to deliver documents to the Sheriff. For example, merely handing a summons and complaint to a courier with an agreement to bring the same to a Sheriff would be sufficient to commence a lawsuit under Rule 3.01(c), so long as the documents are served within 60 days of delivery to the Sheriff. This is contrary to this Court's holding requiring a plaintiff using Rule 3.01(c) to commence a lawsuit "to be diligent." Johnson, 469 N.W.2d at 745.

Here, the bright line approach consistent with the first two provisions of Rule 3.01 requires the Plaintiff to effect physical receipt of the summons and complaint on the Sheriff before the statute of limitations expires. Failing that, as Singelman did, a lawsuit is not commenced under Rule 3.01(c).

"Delivered," means actual receipt of the summons and complaint by the Wilkin County Sheriff's Office.

Under the Rules of Civil Procedure, delivery means to effect actual receipt of the summons and complaint. The Minnesota Supreme Court holding in Stonewall Ins. Co. v. Horak, 325 N.W.2d 134 (Minn. 1982), which involved deciding whether personal service was effective upon an individual under Rule 4.03(a), is instructive. Minnesota Rule of Civil Procedure 4.03(a) deals with the manner of which service of the summons and complaint may be made upon an individual. In relevant part, the Rule permits service

upon “an individual by delivering a copy to the individual personally or by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion then residing therein.”

In Stonewall, the Minnesota Supreme Court held that the actual receipt by the individual of the summons and complaint by mail, evidenced by a certified mail receipt signed by the individual defendant, constituted delivery under Minnesota Rule of Civil Procedure 4.03(a) Minn. R. Civ. P. 4.05, Advisory Committee Note-1985. In the present case and under the Supreme Court’s holding in Stonewall, the summons and complaint was “delivered” to the Wilkin County Sheriff on July 17, 2008 for purposes of commencing Plaintiff’s civil action under Rule 3.01(c) because that is the date of actual receipt by the Wilkin County Sheriff.

The definition of “delivery” in Rule 5.02 for subsequent pleadings is likewise instructive on what “delivered” means in Rule 3.01(c). There, delivery is defined as “handing it to the attorney or to the party; or leaving it at the attorney’s or party’s office with the clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office closed or the person to be served has no office, leaving it at the attorney’s or party’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 5.02. Again under the Rules, “delivery” requires actual receipt or the physical act of leaving a pleading with the recipient. In the present case, the Wilkin County Sheriff actually received the summons and complaint on July 17, 2008.

Singelman alleges that Eischen Cabinet Co. v. Hildebrandt, 683 N.W.2d 813 (Minn. 2004) provides some “indication” of how Minnesota Rule of Civil Procedure 3.01(c) would be construed by the Supreme Court. Appellant’s Brief, p. 5. However, Eischen deals with statutorily prescribed mechanics lien notices, not commencement of a lawsuit, which in this case is controlled by Rule 3.01(c). Further, Eischen does not deal with the issue of delivery, as this case does. However, when the case is actually analyzed, Eischen warrants the conclusion that delivery within the meaning of Rule 3.01(c) requires actual physical receipt of the summons and complaint by the Wilkin County Sheriff.

In Eischen, Hildebrandt contracted with Eischen Cabinet Company to provide cabinets for their home in Hastings, Minnesota. Eischen, 683 N.W.2d at 814. Work was completed on January 25, 2002 and Hildebrandt paid all but \$3,131.72 for the work. Id. On May 24, 2002 Eischen mailed a mechanics lien claim statement to the Dakota County Recorder and sent a copy of the claim by “certified mail” to Hildebrandt’s home address, where the work was done. Id. at 814-15. Eischen claimed he did not know that Hildebrandt received mail at a Hastings post office box, and not at home. The County Recorder’s Office, and also the Hastings Post Office where Hildebrandt received mail, was closed on Monday, May 27, 2002 for Memorial Day. The lien statement was filed and recorded by the County Recorder on May 28, 2002. The Hastings Post Office received the certified letter with the claim statement on May 28, 2002 and Hildebrandt picked up the letter at the Hastings post office box on May 30, 2002. Id. at 815.

Eischen commenced an action to enforce the mechanics lien. In relevant part, Hildebrandt brought a motion for summary judgment, which was granted when the district court concluded that the “service [of the mechanics lien] did not occur until Hildebrandt received a copy of the claim statement on May 30, 2002, and since May 30 was beyond the 120-day statutory time limit for service, Eischen’s mechanics lien was untimely.” Id. Eischen appealed.

On appeal, the Supreme Court addressed the narrow legal issue as to when “service by certified mail is effective under [Minnesota Statute] Section 514.08.” Id. Specifically, the Supreme Court analyzed the mechanics lien statute language, which provided:

[A mechanics lien] ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery, unless within this period:

- (1) A statement of the claim is filed for record with the County Recorder or the Registrar of Titles; and
- (2) *A copy of the statement is served personally or by certified mail on the owner or owners authorized agent or the person who entered into the contract with the contractor.*

Id. at 815-16 citing Minn. Stat. § 514.08, Subd. 1 (emphasis in original). The Supreme Court held it was relevant that the language of the mechanics lien statute was silent as to whether service by certified mail was effective upon mailing or receipt. The Supreme Court went on to hold that it was clear “that the mechanics lien statute is remedial in nature and its essential purpose is to reimburse laborers and material providers who improve real estate and are not paid for their services.” Eischen, 683 N.W.2d at 816.

However, because the mechanics lien statute specifically provided for service by certified mail, the Court went on to discuss the importance of the same. Id. at 816-17. The Court ultimately held:

When we consider (1) the remedial purpose of the mechanics' lien statutes; (2) the definition of certified mail provided by the U.S. Postal Service; (3) the general legal authority; (4) our own Rules of Civil Procedure that provide that service by certified mail is effective upon mailing; and (5) our previous interpretation in Schneider, where the statutory notice provision was silent, that service by certified mail is effective upon mailing, we conclude that service by certified mail of a mechanics lien claim statement, as permitted by Minn. Stat. § 541.08, Subd. 1(2) (2002), is effective upon mailing.

Id. at 818.

First and foremost, Eischen is irrelevant because the statute at issue does not deal with the term "delivery." Indeed, the mechanics lien statute at issue in Eischen allowed for a copy of the statement to be served personally or by certified mail. Id. at 816. The two methods of service discussed in Eischen are already expressly addressed in Rule 3.01. Specifically, Rule 3.01(a) prescribes the manner to commence a lawsuit by personal service and 3.01(b) prescribes the manner to commence a lawsuit by mail.⁷ Rule 3.01(c), which is what is at issue in this case, requires the pleadings to be delivered to the Sheriff. Also, Rule 3.01 does not have a remedial purpose, which was important to the Supreme Court's analysis in Eischen. To the contrary, Rule 3.01 sets out mandatory provisions that

⁷ Even if Singelman wanted to avail herself to the logic of the Court in Eischen with respect to certified mail being a proper method to serve a mechanics lien notice, she fails because she admittedly mailed her summons and complaint via first class mail. Rule 3.01(b) already expressly prescribes how a litigant may commence a lawsuit by mail.

must be complied with to commence a lawsuit in Minnesota. See Minn. R. Civ. P. 3.01 (listing the three ways in which a civil lawsuit may be commenced).

Plaintiff's self-serving interpretation of "delivery" within Rule 3.01(c) would present an extraordinary inconsistency in the application of the law and would be contrary to the Rules of Civil Procedure, case law and common sense. It would be highly illogical to create a rule that requires strict compliance with respect to service by mail on a party, as provided in Rule 3.01(b), but then liberally construe 3.01(c) to permit a lawsuit to be commenced by merely mailing the summons and complaint to the Sheriff. Had Rule 3.01(c) contemplated commencement of a lawsuit by merely mailing the summons and complaint to the Sheriff, the Supreme Court would expressly provide for the same. Here, when Singelman attempted to commence her lawsuit pursuant to 3.01(c), she was required to deliver her summons and complaint to the Wilkin County Sheriff by the end of the statute of limitations period on July 12, 2008. Failing that, as she admittedly did, her cause of action for medical malpractice is barred by the four-year statute of limitations.

Singelman further alleges that construing Minnesota Rule of Civil Procedure 3.01(c) as merely requiring the summons and complaint to be mailed to the Wilkin County Sheriff eliminates the risk of failure of the mail. Plaintiff's Memo, p. 2. However, Rule 3.01 already eliminates the risk of "failure of the mail" in Rule 3.01(b) by prescribing specific procedures by which a lawsuit may be commenced by mail. As this Court expressly holds, commencing a lawsuit pursuant to Rule 3.01(c), as Singelman

attempted in this case, is intended to accommodate “a busy sheriff, not a tardy Plaintiff.” Johnson, 469 N.W.2d at 745. Indeed, the burden under Rule 3.01(c) is for the Plaintiff “to be diligent.” Id. As a matter of law, Singelman failed to comply with Rule 3.01(c) and therefore did not commence her lawsuit prior to July 12, 2008. Her medical malpractice claim is barred as a matter of law and this Court should affirm the trial court and dismiss the appeal.

III. APPELLANT FAILS TO IDENTIFY A GENUINE ISSUE OF MATERIAL FACT THAT PROHIBITS SUMMARY JUDGMENT.

Singelman argues that questions of material fact prevented the trial court from granting summary judgment. Appellant’s Brief, pp. 3-5. Specifically, Singelman alleges that the affidavits of Deborah Gifford, Robert Singelman and Renae Ingersoll created a material fact dispute as to when the Sheriff received her summons and complaint. Id. These affidavits do nothing more than allege what actions the affiants took or what they believe should have happened. These affidavits fail to create a disputed material fact as to when the Sheriff received the summons and complaint.

First, Ms. Gifford is an employee of counsel for Singelman. AA-34. She merely alleges when she mailed the summons and complaint. Id. Second, Robert Singelman is Appellant’s husband. AA-40. Mr. Singelman merely theorizes what he believes “likely” happened relative to the summons and complaint. AA-40-41, ¶¶ 4-6. Finally, Renae Ingersoll’s affidavit ostensibly explains how the mail system works and alleges what is or what is not “likely” relative to “collected mail.” AA-43-44.

Singelman's suggestion that these affidavits explain what actually did happen in this case or that they create a disputed material fact issue relative to the Sheriff's actual receipt of her summons and complaint is absurd. As the trial court correctly found, the affidavits "submitted by the parties clearly show that the Summons and Complaint were not delivered to the Wilkin County Sheriff's Department until July 17, 2008; five days after the statute of limitations had run." AA-54. Notably, Singelman had express consent from the trial court to depose persons from the Wilkin County Sheriff or present affidavits from the same on this issue. RA-2-3. Singelman failed to present any evidence that contradicts Sheriff Matejka's letter and Patricia Kloster's sworn testimony and exhibits explaining that the summons and complaint were received on July 17, 2008. AA-45-48 (Kloster's affidavit), RA-58-60 (Kloster's exhibits and date stamped documents), RA-57 (letter from Sheriff Matejka).

Singelman's rhetorical questions and affidavits are insufficient as a matter of law to create a disputed material fact issue precluding summary judgment. The Minnesota Rules of Civil Procedure prohibit Singelman's tactic in this case.

When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial.

Minn. R. Civ. P. 56.05. Minnesota's appellate courts stress this same standard in case law. Singelman must present "affirmative evidence in order to defeat a properly supported motion for summary judgment." Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989). This is true "even where the evidence is likely to be

within the possession of the Defendant, as long as the Plaintiff has had a full opportunity to conduct discovery.” Id. When a moving party “has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” Id. citing Matsushita Electrical Industrial Co., 475 U.S. 574, 586 (1986). This rule of law is affirmed time and time again in Minnesota’s appellate courts. See Dyrdal v. Golden Nuggets, Inc., 689 N.W.2d 779, 783 (Minn. 2004) (summary judgment may not be defeated with general and conclusory allegations that fail to raise issues of fact); Rollins v. Cardinal Stritch Univ., 626 N.W.2d 464, 469 (Minn. Ct. App. 2001) (holding that no genuine issue of material fact exists where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party); DLH, 566 N.W.2d 60 at 69 (holding non-moving party must present specific facts showing that there is a genuine issue for trial and holding that there is no genuine issue of material fact created by evidence that merely creates a metaphysical doubt as to a factual issue); Bob Useldinger & Sons, Inc. v. Hangsleben, 505 N.W.2d 323, 328 (Minn. 1993) (a party cannot avoid summary judgment by some metaphysical doubt concerning factual issue or by reliance on speculation without concrete evidence); Erickson v. General United Life Ins. Co., 256 N.W.2d 255, 258-59 (Minn. 1977) (holding that general assertions are insufficient to defeat summary judgment and party must demonstrate specific facts that are disputed); and Borom v. City of St. Paul, 184 N.W.2d 595 (Minn. 1971) (holding that a party cannot defeat summary judgment by reference to facts that may be developed at

trial, instead party must demonstrate at time of motion specific facts that create genuine issue for trial).

The trial court did not decide a disputed material fact issue. To the contrary, the evidence as to when the Wilkin County Sheriff physically received Singelman's summons and complaint is undisputed. This Court should affirm the trial court.

IV. RESPONDENT IS NOT ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS DEFENSE.

Singelman's final argument is that St. Francis is estopped from asserting the statute of limitations defense. Appellant's Brief, pp. 6-7. According to the undisputed material facts of this case, this legal theory has no merit. The purpose of the statute of limitations is to encourage the fair and effective administration of justice. Dalton, 158 N.W.2d at 548 n 2. A statute of limitations prescribes the period within which a right may be enforced and after which a remedy is unavailable for reasons of private justice and public policy. Entzion, 675 N.W.2d at 928. The statute of limitations is both procedural and substantive because it regulates when a party may file a lawsuit and when a lawsuit is barred. Mercer, 715 N.W.2d 114 at 119. The statute of limitations for medical malpractice discourages fraud and endless litigation. Id.; see also Entzion, 675 N.W.2d at 928.

Estoppel is an equitable doctrine within a court's discretion and is "intended to prevent a party from taking unconscionable advantage of its own wrong by asserting its strict legal rights." Tackleson v. Abbott-Northwestern Hospital, Inc., 415 N.W.2d 733, 735 (Minn. Ct. App. 1988) citing Northern Petrochemical Co. v. United States Fire Ins.

Co., 277 N.W.2d 408, 410 (Minn. 1979). It is Singelman's burden to demonstrate the elements of equitable estoppel. Kay Louise Stoebe v. Merastar Ins. Co., 554 N.W.2d 733 (Minn. 1996). To invoke the doctrine of equitable estoppel, Singelman must show that the St. Francis "made representations or inducements upon which [the Plaintiff] reasonably relied which will cause them harm if estoppel is not applied." Tackleson, 415 N.W.2d at 735. Before a court will examine the conduct that the party sought to be estopped, the Plaintiff seeking the equitable remedy "must demonstrate that he suffered some loss through his reasonable reliance on that conduct." Ridgewood Development Co. v. State, 294 N.W.2d 288, 292 (Minn. 1980). Reasonable reliance is an essential element of equitable estoppel. Anderson v. Minnesota Ins. Guar. Ass'n., 534 N.W.2d 706, 709 (Minn. 1995). Whether reasonable reliance exists involves two inquiries: (1) whether reliance occurred, and (2) whether that reliance was reasonable. Id. Where both parties equally know the facts in which the representation is based, equitable estoppel cannot exist. Plummer v. Mold, 22 Minn. 15 (1875). Equitable estoppel is a question of law where, as here, only one inference can be drawn from the facts. Matter of Westling Mfg. Inc., 442 N.W.2d 328 (Minn. Ct. App. 1989).

This brief has already detailed the communications between Singelman (via her counsel) and St. Francis. See supra, pp. 8-11. In relevant part, on April 5, 2007, more than 16 months before the statute of limitations expired, Singelman's attorney contacted St. Francis explaining that he had "been retained by Lonnie and Bob Singelman to represent them in their claim against St. Francis Health Care, Breckenridge, Minnesota,

arising out of the injury she sustained on July 12, 2004.” AA-19. Immediately, St. Francis responded, denying liability and explaining that there is no evidence that St. Francis caused Singelman’s injury. AA-20-21. Thereafter, counsel for Singelman made threats to commence a lawsuit and requested various documents. AA-22-32.

On or about October 16, 2007, nine months before the statute of limitations expired, Singelman’s attorney wrote to St. Francis:

Thank you for your letter of October 11, and enclosures. However, simply receiving the materials requested of Catholic Health Initiative Claim Coordinator Ford back in April, is not enough to comply with the ultimatum contained in my letter of October 8.

Please reference that letter for the additional materials necessary to forestall suit.

RA-116. Thus, the very last communication Singelman provided to St. Francis was her express intent to bring a lawsuit. St. Francis did not respond to Singelman’s threat. Despite threats to commence a lawsuit, Singelman took no action for nine months.

Singelman fails as a matter of law in carrying her burden to prove the elements of estoppel. Specifically, there is no evidence that St. Francis made any affirmative representation that it would not require Singelman to commence a lawsuit, nor is there evidence that Singelman reasonably relied on any communication from St. Francis to her detriment. In fact, Singelman’s counsel specifically wrote to counsel for St. Francis indicating that if certain actions were not taken he would start Singelman’s lawsuit. Singelman’s counsel wrote that unless he had specific requested documentation “by Monday, October 29, [2007] together with your proposed arbitration agreement and the

names of three proposed arbitrators, I will start suit and get the documentation I have requested via discovery.” AA-30. On October 11, 2007, counsel for St. Francis provided documentation to Singelman’s counsel but did not provide the requested proposed arbitration agreement and the names of three proposed arbitrators. AA-31. Once more, Singelman’s counsel wrote counsel for St. Francis requesting materials that would be “necessary to forestall suit” on October 16, 2007. RA-116. St. Francis took no action to “forestall suit.” Rather, nine months elapsed before Singelman attempted to commence her lawsuit through the Wilkin County Sheriff.

Singelman’s assertion in her affidavit that she retained an attorney after alleged “discussions” with Mr. Ford is utterly irrelevant. AA-37. Singelman retained an attorney to represent her in this lawsuit in April 2007. AA-19. The record reflects that the same attorney represented her for at least 16 months before the statute of limitations expired. And of those 16 months, Singelman’s counsel had no communication with St. Francis for the last nine months (mid October 2007-July 2008). Singelman could not have reasonably relied on any of the cited communications and refrained from commencing a lawsuit where 1) St. Francis denied liability; 2) retained legal counsel; 3) did not commit to alternative dispute resolution; 4) did not respond to counsel’s demands for alternative dispute resolution; and 5) did not ask Singelman to refrain from bringing a lawsuit. Singelman’s suggestion that St. Francis “strung” her and her counsel along is utterly without merit.

The Tackleson case is instructive on the issue before this Court. On September 17, 1980 Gladys Tackleson was admitted to Abbott Northwestern Hospital for surgery. She ultimately fell from her hospital bed and injured her ankle. Tackleson, 415 N.W.2d at 734. Tackleson's husband spoke with a physician who told him that the fall was the Hospital's fault and the hospital's insurance would cover the bill. Id. In January 1982 Abbott Northwestern contacted Gladys Tackleson and offered to forgive her hospital bill if she would sign a release relieving it from liability. Ms. Tackleson refused to sign the release. The Tacklesons never contacted an attorney and an attorney never pursued their claim. Abbott Northwestern billed the Tacklesons but they did not make any payments and had no further communication. Id. Abbott Northwestern made an internal decision not to hire a collection agency or otherwise seek payment of the bill. Id.

On January 19, 1983, the Tacklesons contacted an attorney and commenced a lawsuit naming Abbott Northwestern and several of its nurses as defendants. Id. Defendants moved for summary judgment, claiming the action was barred by the statute of limitations. In relevant part, the trial court granted Abbott Northwestern's motion for summary judgment based on the then applicable two-year statute of limitations. Id. Tacklesons appealed.

On appeal, the primary issue was whether the trial court erred in determining that the Tacklesons claim against Abbott Northwestern was barred by the two-year statute of limitations. The Tacklesons argued that the hospital was equitably estopped from asserting the statute of limitations as a defense. Id. at 735. Specifically, the Tacklesons

argued that Abbott Northwestern's offer to forgive the hospital bill in exchange for a release of liability, as well as its decision not to collect the bill, prevented them from bringing their lawsuit until after the statute of limitations had run. This Court disagreed. Specifically, this Court recognized that in Brenner v. Nordby, 306 N.W.2d 126 (Minn. 1981) the Supreme Court held that an offer to settle a potential claim, when combined with other factors, could entitle a party to invoke the doctrine of equitable estoppel. However, the Court mandated that "there must be some evidence that the party relied on the offer as a waiver of its right to assert the statute of limitations." Tackleson, 415 N.W.2d at 735 citing Brenner, 306 N.W.2d at 127. This Court held that there was no evidence that a party relied on the offer as a waiver of its right to assert the statute of limitations. Id. at 735-36. Further, this Court held that Abbott Northwestern's decision not to collect on the hospital bill did not create estoppel. Id. at 736.

In the present case, there is no evidence that St. Francis waived its right to assert a statute of limitations defense. Tellingly, and unlike Tackleson, St. Francis did not admit liability or seek to settle Singelman's claims with a release. Singelman also did not rely on any representations of St. Francis. Rather, in April 2007, approximately one year and a half before the statute of limitations expired, she retained an attorney. Singelman's counsel then communicated with St. Francis and threatened to bring a lawsuit on October 16, 2007. Singelman and her attorney then ceased all communication with St. Francis and waited nine months to attempt to commence her lawsuit, but failed when she did not

deliver the summons and complaint to the Wilkin County Sheriff by July 12, 2008.

Singelman's estoppel claim is completely without merit.

This Court should dismiss Appellant's estoppel argument as a matter of law and affirm the trial court's summary judgment order.

CONCLUSION

Appellant did not deliver her summons and complaint to the sheriff until July 17, 2008, five days after the four-year statute of limitations expired on her claim against Respondent. Therefore, she failed to commence her lawsuit pursuant to Rule 3.01(c) and her claim is barred as a matter of law. There are no disputed material facts that prohibit summary judgment in this case. Respondent is not barred from asserting a statute of limitations defense. This Court should affirm the trial court's order granting summary judgment in favor of Respondent and dismiss the appeal in its entirety.

Dated: _____

8-10-09

QUINLIVAN & HUGHES, P.A.

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