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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180317

Ex parte Kathy Russell, R.N.

PETITION FOR WRIT OF MANDAMUS

(In re: Lamerle Miles, as personal representative of the
Estate of Tameca Miles, deceased

v.

Coosa Valley Medical Center et al.)

1180318

Ex parte Kristen Blanchard, R.N.

PETITION FOR WRIT OF MANDAMUS

(In re: Lamerle Miles, as personal representative of the
Estate of Tameca Miles, deceased

v.

Coosa Valley Medical Center et al.)

1180319

Ex parte Teshia Gulas and Carla Pruitt

PETITION FOR WRIT OF MANDAMUS

(In re: Lamerle Miles, as personal representative of the
Estate of Tameca Miles, deceased

v.

Coosa Valley Medical Center et al.)

(Talladega Circuit Court, CV-15-900184)

MITCHELL, Justice.

Lamerle Miles ("Miles"), as the personal representative of the estate of her deceased mother Tameca Miles ("Tameca"), sued Coosa Valley Medical Center ("CVMC") and other named and fictitiously named parties, alleging that they had engaged in negligent, wanton, and outrageous conduct that caused Tameca's death. Miles specifically alleged that multiple CVMC employees had breached the applicable standards of care,

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resulting in the Sylacauga Police Department removing Tameca from the CVMC emergency room before she was treated for what was ultimately determined to be bacterial meningitis. Miles did not identify any specific CVMC employees in her original complaint, but she later filed a series of amendments substituting Kristen Blanchard, Teshia Gulas, Carla Pruitt, and Kathy Russell (hereinafter referred to collectively as "the CVMC petitioners") for fictitiously named defendants.

After being substituted as defendants, the CVMC petitioners moved the trial court to enter summary judgments in their favor, arguing that they had not been named defendants within the two-year period allowed by the statute of limitations governing wrongful-death actions. The Talladega Circuit Court denied those motions, and the CVMC petitioners now seek mandamus relief in this Court. We deny the petitions filed by Blanchard, Gulas, and Pruitt and grant the petition filed by Russell.

Facts and Procedural History

At issue in these petitions is whether the CVMC petitioners were appropriately substituted for fictitiously named defendants after the statute of limitations had expired:

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(1) Kristen Blanchard, one of the emergency-room nurses who was on duty when Tameca was first brought to the emergency room; (2) Teshia Gulas, the emergency-room secretary; (3) Carla Pruitt, an admissions clerk who, along with Gulas, unsuccessfully attempted to get identifying information from Tameca before Tameca was removed from the emergency room by police; and (4) Kathy Russell, the nursing supervisor and highest ranking administrator on duty at CVMC when Tameca was first brought to the emergency room. The involvement that each of these individuals had in the events giving rise to this action are described in detail below.

A. Hospital Visits and Death of Tameca

At 6:05 p.m. on December 28, 2013, Tameca telephoned 911 seeking emergency medical assistance for a severe headache. Michael Ashworth, an emergency medical technician ("EMT") with Sylacauga Ambulance Service, was dispatched to her residence. When he arrived on the scene, Tameca was agitated and in extreme pain. Ashworth states that he did not have any medication he could give Tameca for the pain so he just tried to help her calm down after she entered the ambulance for the trip to CVMC. Once Tameca was in the ambulance, Ashworth had

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difficulty measuring her blood pressure and pulse because she would not be still and was repeatedly unbuckling her seat belt and hitting the cabinets at her side. Ashworth states that, after Tameca began sticking her fingers in her mouth in an apparent attempt to induce vomiting, he was able to grab her hands and hold them in her lap for the duration of the trip. As they approached CVMC, the EMT driving the ambulance radioed the emergency room to, as Ashworth describes it, "tell them we were coming and kind of what we had." That radio report was received by Kristen Blanchard, an emergency-room nurse, who recorded the report in the communication-control log.

At 6:26 p.m., the ambulance carrying Tameca arrived at the CVMC emergency room, where it was met by two security guards from Delta Security Services, Inc. ("Delta"), which CVMC retained to provide security. Ashworth states that Tameca initially cooperated in exiting the ambulance, but that she became loud and combative. According to Ashworth, upon entering the emergency room with Tameca, he described her condition and behavior to the emergency-room staff at the nurses' station, including Blanchard and Dr. Jenna Johnson, before leaving to respond to another emergency call.

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Jeff Hill was one of the security guards who assisted Ashworth with Tameca when she arrived at CVMC. Hill states that he witnessed Ashworth telling Blanchard and Teshia Gulas, the emergency-room secretary, about Tameca when they entered the emergency room. Hill states that "[Tameca] was being very combative. She was spitting. She was hissing. She was cussing people out." According to Hill, Tameca continued to be uncooperative while Carla Pruitt, an admissions clerk, attempted to get her name and birth date so that Pruitt could register her as a patient. During this time, Gulas also unsuccessfully attempted to get identifying information from Tameca. According to Hill, after Tameca's behavior continued to escalate, he telephoned his supervisor at Delta as well as Russell, the nursing supervisor at CVMC who was not in the emergency room at that time, for guidance on how to handle Tameca. Hill states that, after he talked to Russell a second time, she told him: "[I]f you need to call the police, call them." Hill then contacted the Sylacauga police, and, after two police officers arrived, he apprised them of the situation. When the police officers approached Tameca, who was still in the emergency-room waiting area, she swore at

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them and kicked one of the officers. The police officers then tried to talk to Tameca for what Hill estimated to be 15 minutes. After Tameca attempted to kick and bite the officers, they handcuffed her and transported her to the Talladega County jail.

Tameca spent the night of December 28 in jail. During that time, she was evaluated by personnel from Quality Correctional Health Care, Inc. ("QCHC"), which provided health-care services at the jail. At some point on December 29, the decision was made to transport Tameca back to CVMC to be treated. This time, Tameca received medical treatment and was eventually diagnosed with bacterial meningitis. At approximately 5:30 p.m. on December 29, Tameca died.

B. Filing of This Lawsuit and Initial Discovery

On May 19, 2015, Miles filed a three-count complaint initiating this wrongful-death action. Miles specifically named CVMC and QCHC as defendants, along with other yet-to-be identified parties who were identified under Rule 9(h), Ala. R. Civ. P., as fictitiously named defendants. In the first count, Miles claimed that the defendants, both named and fictitiously named, negligently breached the applicable

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standard of care by (1) "failing to timely and properly triage, evaluate or diagnose Tameca's complaints;" (2) "failing to timely and properly treat Tameca's complaints;" and (3) "failing to timely and properly notify physician(s) of Tameca's symptoms and her emergency serious medical condition." Miles's second count claimed that those same failures constituted a wanton breach of the applicable standard of care. Finally, Miles claimed in count three that CVMC and the fictitiously named defendants had "acted outrageously by failing to diagnose, monitor, manage, or treat Tameca, a seriously ill patient, but rather having her arrested and sent to jail."

In conjunction with filing her complaint, Miles propounded discovery requests to CVMC. Through interrogatories, Miles requested that CVMC identify any employees or agents who were involved in, had witnessed, or had knowledge of the events described in the complaint. Among other things, Miles requested that CVMC disclose all documents it maintained that were "pertinent" to Tameca's December 28 and 29 visits and provide a list of all personnel who were working in the emergency room on those dates.

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On May 29, 2015, CVMC was served with Miles's complaint and discovery requests; CVMC filed its answer on June 29, 2015. Shortly thereafter, Miles's attorney began inquiring about the status of CVMC's discovery responses, even though those responses were not yet due under Rules 33(a) and 34(b), Ala. R. Civ. P. A time line of those inquiries and Miles's further attempts to conduct discovery over the next three months is as follows:

July 2, 2015: Miles's attorney sent CVMC's attorney an e-mail stating: "We want to take the deposition of the nurse who saw [Tameca] the day she was sent to the jail. Can you give me her name ...?"

July 9, 2015: Miles's attorney sent CVMC's attorney a letter requesting CVMC's discovery responses within 15 days.

July 28, 2015: Miles's attorney sent CVMC's attorney another e-mail, stating: "Following up with you on discovery responses and the nurse names. Please let me hear from you [as soon as possible]."

July 31, 2015: A conference call was held for all the attorneys in the case to discuss deposition scheduling. Miles's attorney followed up with an e-mail to those attorneys summarizing the content of the call and noting that Miles would be deposed on October 5, 2015; that he would attempt to schedule the depositions for Ashworth and the other EMT for the week of October 5; and that CVMC's attorney would "check with his client to see if we can take the triage nurse or whoever the nurse that saw [Tameca] on 12/28, the day she initially reported to [CVMC]."

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August 4, 2015: Miles's attorney sent another e-mail to CVMC's attorney requesting that he "[p]lease let me know where you are on discovery responses." That same day, Miles also issued subpoenas to Ashworth and the other EMT setting their depositions for October 6, 2015.¹

August 7, 2015: Miles moved the trial court to enter an order compelling CVMC to respond to her discovery requests.

August 26, 2015: Miles's attorney sent CVMC's attorney an e-mail requesting to talk about the case and noting that "I still have not received your discovery responses."

On September 3, 2015, the trial court granted Miles's motion to compel and ordered CVMC to serve its discovery responses within 30 days. On September 17, 2015, Miles's attorney sent CVMC's attorney an e-mail asking if there was "[a]ny update on discovery and records yet?" CVMC's attorney responded that same day by leaving Miles's attorney a voice mail in which he apparently indicated that CVMC was not yet ready to send some documents and video. Miles's attorney responded with the following e-mail later that afternoon:

"Listened to your voicemail. All of that is fine. However, why can't you go ahead and send me the medical records and discovery? You can send the other documents and video later. I know you have

¹On September 14, 2015, Miles's attorney canceled the depositions of the EMTs because of a conflict with a trial in another case.

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the medical records and discovery ready. As you know, I need those to discover my case. I have to send experts, etc., just like you. Please send the medicals and discovery."

On September 25, 2015, CVMC's attorney sent the medical records from Tameca's admission on December 29, 2013, to Miles's attorney; the rest of CVMC's responses were provided to Miles's attorney four days later on September 29, 2015. In those responses, CVMC did not identify any documents associated with Tameca's visit to the emergency room on December 28, 2013, nor did it identify any specific CVMC staff members who interacted with Tameca, witnessed her behavior, or otherwise had knowledge of her visit to the emergency room on that date. CVMC did, however, provide a list of 14 staff members who had been assigned to the emergency room on December 28, 2013, along with a description of their positions and the hours each of them had worked. Blanchard and Gulas were included on that list, but not Pruitt or Russell.

C. Continuing Discovery Following CVMC's September 2015 Discovery Responses

Miles subsequently issued subpoenas to Ashworth and the other EMT setting their depositions for November 18, 2015, but she states that those subpoenas were returned without being

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served. New subpoenas were thereafter issued and served, setting those depositions for January 21, 2016. Ashworth's deposition was held as scheduled on that date, and, as recited above, he testified that he talked to Blanchard and Dr. Johnson about Tameca when he brought her into the emergency room on December 28, 2013. Six days after Ashworth's deposition -- on January 27, 2016 -- Miles amended her complaint and substituted Blanchard, Dr. Johnson, and Delta for fictitiously named defendants.²

On February 25, 2016, Blanchard moved the trial court to enter a summary judgment in her favor, arguing that Miles's claims against her were barred by the statute of limitations.³ Specifically, Blanchard argued: (1) that CVMC's September 29, 2015, discovery responses identified her as a nurse on duty in the emergency room when Tameca was brought in on December 28, 2013; (2) that Tameca died on December 29, 2013; (3) that the two-year period during which a wrongful-death claim based upon Tameca's death could be asserted expired on December 29, 2015;

²The trial court later dismissed Delta and QCHC.

³Section 6-5-410(d), Ala. Code 1975, provides that a wrongful-death claim must be asserted "within two years from and after the death of the testator or intestate."

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and (4) that Miles did not name her as a defendant until January 27, 2016. Dr. Johnson thereafter filed her own motion for a summary judgment making a similar argument.

In the meantime, Miles continued taking discovery. On March 3, 2016, Miles's attorney contacted CVMC's attorney requesting to schedule Blanchard's deposition; they ultimately agreed on a date of May 11, 2016. On April 29, 2016, in advance of Blanchard's deposition, CVMC supplemented its September 29, 2015, response to Miles's initial discovery requests by producing a copy of the communication-control log for December 28, 2013. This log contained the entry made by Blanchard indicating that an EMT had radioed the emergency room at 6:20 p.m. on December 28 regarding a 40-year-old female patient who was being transported. Written inside the box labeled "Initial Pt. Assessment Information/Orders" were two notes -- "HA," shorthand for headache, and "aggressive." The entry further listed the physician as "Johnson" and the nurse as "KNB," which is acknowledged to be Blanchard. Blanchard's scheduled deposition was ultimately delayed, but when she was finally deposed, she acknowledged that she had made this entry.

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On May 20, 2016, Miles's attorney again contacted CVMC's attorney by e-mail, expressing his frustration with his inability to obtain requested information from CVMC and stating that he would ask the trial court to intervene if CVMC was not forthcoming about which CVMC employees "saw" Tameca on December 28, 2013. CVMC's attorney responded on May 22, 2016, stating that CVMC had already identified the CVMC employees who were working in the emergency room on December 28 and 29 in its September 29, 2015, discovery responses and that he would try to make them available for depositions as soon as possible. Miles's attorney responded later that day, stating: "We requested the names of the employees who saw [Tameca] not the ones who worked there. You and I discussed this before." On May 27, 2016, Miles moved the trial court to compel CVMC to fully respond to its May 2015 discovery requests, asking the court to order CVMC to identify all "nurses/employees/witnesses who saw, witnessed, provided treatment to, or otherwise [were] involved with [Tameca] on December 28 and 29, 2013."

On June 10, 2016, CVMC served supplemental discovery responses, one of which provided:

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"All witnesses with knowledge of the facts related to Tameca Miles on December 28 and 29 are not known. A list of staffing for the emergency room on December 28, 2013, was [previously] provided This list includes emergency room staff that saw Tameca Miles on December 28, 2013, including Kristen Blanchard, RN, and Teshia Gulas, Unit Secretary. In addition, admissions clerk Carla Pruitt saw Tameca Miles on December 28, 2013."

On June 24, 2016, Miles amended her complaint to substitute Gulas and Pruitt for fictitiously named defendants, and, on June 28, 2016, the trial court denied Miles's motion to compel as moot.

Over the next two months, the parties worked to schedule depositions, and Miles repeatedly sought confirmation from CVMC that no other CVMC employees had information about Miles's visit and removal from the emergency room on December 28. Depositions for the Delta security guards and the CVMC employees who had been named as defendants were ultimately scheduled for the end of August 2016, but CVMC eventually canceled those depositions after its attorneys concluded that they could not represent all the CVMC employees.

After Gulas and Pruitt were provided with separate counsel, Blanchard's deposition was scheduled for November 10, 2016. During that deposition, Blanchard acknowledged that she

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had been at the nurse's station when Ashworth brought Tameca into the emergency room, but she denied receiving an oral report from him at that time, stating that she was merely there to get a different patient's chart and that she heard Ashworth talk about Tameca for only "a few seconds." She otherwise denied assessing, treating, or being given responsibility for Tameca's care in any way on December 28.

A status conference was conducted by the trial court later that month, and Miles states that the parties were thereafter able to reach an agreement about the scheduling of future depositions. The deposition of Delta security guard Jeff Hill was conducted on January 31, 2017, and, during that deposition, Hill stated that he had spoken with Russell on the telephone about what to do with Tameca on December 28. This was the first time Miles learned of Russell's involvement with Tameca, and, on February 3, 2017, she amended her complaint for a third time to substitute Russell for a fictitiously named defendant.

Depositions for Gulas and Pruitt were conducted on March 23, 2017; both confirmed that they had interacted with Tameca on December 28 but stated that they had been unable to obtain

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identifying information from her. When Russell was deposed on August 31, 2017, she denied having had any conversation with Hill on December 28 about Tameca or any other unruly or aggressive patient in the emergency room.

D. Hearing and Disposition of Summary-Judgment Motions That Form the Basis of These Petitions

On September 14, 2017, Gulas and Pruitt filed a joint motion for a summary judgment, arguing, among other things, that the claims Miles had asserted against them were barred by the statute of limitations. The next day, Russell filed her own summary-judgment motion making a similar argument. Miles thereafter filed a single response opposing the summary-judgment motions filed by (1) Blanchard, (2) Dr. Johnson, (3) Gulas and Pruitt, and (4) Russell. Miles argued that she had properly substituted these defendants for fictitiously named defendants who were specifically described in her May 2015 complaint and that her claims against them were therefore timely under Rules 9(h) and 15(c), Ala. R. Civ. P. Miles further argued that any delay in making those substitutions was attributable to CVMC's failure to timely respond to her discovery requests.

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On November 8, 2017, the trial court conducted a hearing on the pending summary-judgment motions. For reasons that are not clear from the materials before this Court, the trial court did not rule on those motions in the ensuing months, and, on September 4, 2018, it conducted a second hearing. On December 7, 2018, the trial court denied all four summary-judgment motions. Blanchard, Dr. Johnson, Gulas, Pruitt, and Russell subsequently petitioned this Court for writs of mandamus directing the trial court to dismiss on statute-of-limitations grounds the claims Miles had asserted against them.⁴ We have consolidated the petitions for the purpose of issuing one opinion.

Standard of Review

This Court explained in Ex parte Integra LifeSciences Corp., 271 So. 3d 814, 817 (Ala. 2018), the standard of review that we apply in mandamus proceedings that involve a dispute about the use of fictitiously named parties to avoid a statute of limitations:

""A writ of mandamus is an extraordinary remedy, and one petitioning for it must show: (1) a clear legal right

⁴This Court dismissed Dr. Johnson's petition after she and Miles jointly moved the Court to do so.

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in the petitioner to the order sought; (2) an imperative duty on 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 Mobile Infirmary Ass'n, 74 So. 3d 424, 427 (Ala. 2011) (quoting Ex parte Jackson, 780 So. 2d 681, 684 (Ala. 2000)).

"Although mandamus will not generally issue to review the merits of an order denying a motion for a summary judgment, this Court has held that, in the 'narrow class of cases involving fictitious parties and the relation-back doctrine,' mandamus is the proper method by which to review the merits of a trial court's denial of a summary-judgment motion in which the defendant argues that the plaintiff's claim was barred by the applicable statute of limitations. Mobile Infirmary Ass'n, 74 So. 3d at 427-28 (quoting Jackson, 780 So. 2d at 684)."

Analysis

The CVMC petitioners seek mandamus relief from this Court on statute-of-limitations grounds. Although the specific circumstances of each petitioner are different, the same general principles of fictitious-party practice guide our review. Accordingly, we began our analysis with a review of those principles.

The use of fictitiously named parties is authorized by Rule 9(h), which states:

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"When a party is ignorant of the name of an opposing party and so alleges in the party's pleading, the opposing party may be designated by any name, and when the party's true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the true name."

Rule 15(c)(4), Ala. R. Civ. P., further provides that an amendment substituting the true name of a party under Rule 9(h) "relates back to the date of the original pleading" if relation back is consistent with "principles applicable to fictitious party practice." This Court summarized those principles in Ex parte Noland Hospital Montgomery, LLC, 127 So. 3d 1160, 1167 (Ala. 2012):

"In order to avoid the bar of a statute of limitations when a plaintiff amends a complaint to identify a fictitiously named defendant on the original complaint, the plaintiff: (1) must have adequately described the fictitiously named defendant in the original complaint; (2) must have stated a cause of action against the fictitiously named defendant in the body of the original complaint; (3) must have been ignorant of the true identity of the fictitiously named defendant; and (4) must have used due diligence in attempting to discover the true identity of the fictitiously named defendant. Ex parte Tate & Lyle Sucralose[, Inc.], 81 So. 3d [1217,] 1220-21 [(Ala. 2011)]."

This Court has further emphasized that the due-diligence requirement applies both before and after the filing of the original complaint and that a plaintiff must similarly

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exercise due diligence in amending his or her complaint once the true identity of a defendant is discovered. Ex parte Cowgill, [Ms. 1180936, February 7, 2020] ___ So. 3d ___, ___ (Ala. 2020). We now turn to the specific arguments made by each of the CVMC petitioners.

A. Kristen Blanchard

Blanchard argues that Miles's amended complaint substituting her as a defendant does not relate back to the original complaint because, she says, Miles did not exercise due diligence to identify her before the statute of limitations expired. Blanchard does not argue that Miles should have been able to identify her before Miles filed her original complaint in May 2015, but she emphasizes that CVMC's September 29, 2015, discovery responses identified her as one of only five nurses on duty in the emergency room at the time Tameca was brought in on December 28, 2013. Miles had three months at that point to seek more information about the listed nurses before the statute of limitations expired, but, Blanchard states, Miles failed to initiate any discovery during that period to determine whether any of those nurses were potential defendants. Blanchard argues that this was a

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lack of due diligence that bars Miles from invoking Rule 9(h) to substitute her for a fictitiously named defendant.

In support of her argument, Blanchard primarily relies upon Sherrin v. Bose, 608 So. 2d 364, 365-67 (Ala. 1992), in which this Court held that a physician was entitled to a summary judgment on statute-of-limitations grounds when the undisputed facts showed that the plaintiff had learned the physician's name -- and that the physician had actually seen the now deceased patient in the emergency room -- approximately 10 months before amending her complaint to substitute him for a fictitiously named party after the statute of limitations had expired. Blanchard asserts that Sherrin controls this case because, she says, Miles similarly knew of Blanchard's identity for several months before amending her complaint to substitute Blanchard as a defendant after the statute of limitations expired.

We disagree that this Court's holding in Sherrin requires the same result here. In Sherrin, the plaintiff learned in the responses she received to her interrogatories not just that the physician she later substituted as a defendant was on duty in the emergency room when the patient went there for

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treatment, but also that this physician had actually seen the patient on that date and was, in fact, the first physician to have treated her. 608 So. 2d at 366. In contrast, it is undisputed in this case that Miles did not learn that Blanchard had any specific connection to Tameca until after the statute of limitations expired. All Miles knew before the statute of limitations expired was that Blanchard had been on duty in the emergency room when Tameca was brought in, and, Miles argues, any suggestion that she should have amended her complaint to substitute Blanchard as a defendant on that basis alone was refuted by this Court in Oliver v. Woodward, 824 So. 2d 693, 699 (Ala. 2001):

"Although Dr. Woodward argues that [the plaintiff] should have sued him and the other emergency-room doctor as soon as they were identified by [the hospital] in November 1998 [as being the emergency-room doctors on duty when the plaintiff went to the hospital], substitution of Dr. Woodward and the other emergency-room doctor for fictitious defendants without a reasonable factual basis or a substantial justification for the substitution would have subjected [the plaintiff] to sanctions under Rule 11, Ala. R. Civ. P., and the Alabama Litigation Accountability Act, § 12-19-270 et seq., Ala. Code 1975."

The facts of this case are more akin to Oliver -- in which the plaintiff had no knowledge that the physician

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eventually substituted for a fictitiously named defendant had a connection to the case, beyond merely being on duty in the emergency room when the plaintiff was there, until after the statute of limitations expired -- than Sherrin -- in which it was undisputed that the plaintiff knew for months before the statute of limitations expired that the physician who was belatedly substituted for a fictitiously named defendant was involved in the decedent's treatment. But Oliver is not dispositive. Blanchard asserts that Miles failed to exercise due diligence because she did not initiate any discovery to learn the extent of Blanchard's knowledge of, and involvement with, Tameca in the three-month window after Blanchard was first identified and before the statute of limitations expired. This argument implicitly asks us to give no consideration to the discovery Miles initiated before Blanchard was generically identified to which CVMC failed to file timely and complete responses.

Miles argues that Blanchard's status as a potential defendant would have been known much sooner if CVMC had given timely, complete, and accurate responses to the interrogatories and requests for production that she served

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upon it in May 2015. We discuss the substance of the interrogatories more in the following section, but we note that Miles's requests for production sought "all ... documents ... which are in any wise pertinent to anything that happened to or was experienced by [Tameca] on December 28 or 29, 2013." That document request clearly encompassed the communication-control log, which identified Blanchard as the nurse on the December 28, 2013, entry that undisputedly refers to Tameca. This document, however, was not produced until April 2016 -- 11 months after Miles's request for production was made, 4 months after the statute of limitations expired, and 3 months after Blanchard was substituted as a defendant. A writ of mandamus will issue only when the petitioner has shown a clear legal right to the order sought. Integra LifeSciences Corp., 271 So. 3d at 817. We cannot conclude that such a showing has been made here, where the trial court could have reasonably concluded that Miles had diligently pursued discovery targeted toward identifying Blanchard but had been hindered by CVMC's failure to timely disclose a requested record that would have

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clearly revealed a connection between Blanchard and Tameca.⁵ Accordingly, Blanchard's petition is denied.

B. Teshia Gulas

The argument Gulas makes in her petition is similar to the argument made by Blanchard -- CVMC's September 29, 2015, discovery responses identified her as 1 of 14 CVMC employees who was working in the emergency room on December 28, 2013, but, Gulas argues, Miles took no action over the next three months to determine whether Gulas was a potential defendant and instead allowed the statute of limitations to expire. Gulas contends that this is a lack of due diligence that bars Miles from relying upon Rule 9(h) to substitute her for a fictitiously named defendant.

As Gulas notes, a long line of this Court's cases makes clear that, when a plaintiff has asserted a claim alleging that an injury or death was caused by an act of medical malpractice, that plaintiff is obligated to diligently

⁵CVMC was apparently aware of the communication-control log when it served its September 2015 interrogatory responses because one response stated that "Sylacauga Ambulance called [the CVMC emergency room] at 6:20 p.m. to report that they were transporting a 40 year old, aggressive female who was complaining of a headache." It is unclear where this information was obtained if not from the communication-control log.

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investigate the involvement of every health-care provider that has been identified as being involved in the injured or deceased party's treatment. The failure to exercise due diligence in this respect prevents the plaintiff from subsequently relying upon Rule 9(h) to substitute a long-identified party for a fictitiously named defendant. See, e.g., McGathey v. Brookwood Health Servs., Inc., 143 So. 3d 95, 108 (Ala. 2013) ("Because of the medical records she obtained, [the plaintiff] knew [the health-care providers'] names shortly after her surgery and knew that they were involved in her treatment during the surgery. Despite this knowledge, there is no indication that, in the nearly two years between the time [the plaintiff] received the medical records and the time she filed her complaint, [the plaintiff] performed any investigation to determine whether either of those individuals was responsible for her injury."); Weber v. Freeman, 3 So. 3d 825, 833 (Ala. 2008) ("Because [the plaintiff] knew of Dr. Weber's involvement in [the decedent's] treatment, it was incumbent upon her, before the statute of limitations on her claim expired, to investigate and evaluate the claim to determine who was responsible for [the

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decedent's] death."); Harmon v. Blackwood, 623 So. 2d 726, 727 (Ala. 1993) ("[W]hen a plaintiff knows the name of a physician and the involvement of that physician in the treatment of the patient, it is incumbent upon the plaintiff, before the running of the statutory period, to investigate and to evaluate his claim to determine who is responsible for the injury and to ascertain whether there is evidence of malpractice.").

Crucially, the principle applied in McGathey, Weber, and Harmon applies only when the plaintiff had reason to know, before the statute of limitations expired, that the health-care provider had some involvement in the facts upon which the action was based. Here, Miles had no medical records or other information indicating which CVMC employees interacted with Tameca or were otherwise involved in her treatment on December 28, 2013, until after the statute of limitations expired. Although Gulas was identified in a list of 14 CVMC employees who worked in the emergency room on December 28, 2013, Miles had no knowledge of Gulas's relevance to this case until CVMC supplemented its discovery responses on June 10, 2016, and revealed for the first time that Gulas "saw Tameca Miles on

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December 28, 2013." Miles then amended her complaint to substitute Gulas as a defendant that same month.

Gulas nevertheless argues that Miles should have done more to determine whether she was a potential defendant in the three-month period after she was identified as having been on duty on December 28, 2013; like Blanchard, however, she ignores the fact that Miles diligently conducted discovery even before Gulas was identified that, if CVMC had promptly and fully responded, would have revealed that Gulas was a potential defendant. That discovery included interrogatories served in May 2015 specifically asking CVMC to identify (1) its employees who were "involved in any way with the treatment of [Tameca] on December 28"; (2) any individual "who witnessed or has knowledge regarding the facts and circumstances surrounding the happening of the incident made the basis of this case"; and (3) its employees "(whether administrative, nursing, technical staff or otherwise) ... who played any role in administering health care services to Tameca." Despite those interrogatories and repeated informal requests by Miles's counsel for more specific information -- catalogued above in the first section of this opinion -- Gulas was not

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identified as an individual who interacted with Tameca on December 28, 2013, until five and a half months after the statute of limitations expired. Under these circumstances, we are satisfied that Miles had no knowledge that Gulas "was in fact a party intended to be sued" when the statute of limitations expired and that Miles exercised due diligence in her attempt to identify Gulas. Harmon, 623 So. 2d at 727. Gulas has not shown that she has a clear legal right to the relief she seeks, and her petition for the writ of mandamus is therefore denied.

C. Carla Pruitt

Carla Pruitt was not identified in CVMC's September 2015 discovery responses as one of the CVMC employees on duty in the emergency room on December 28, 2013; the materials before us do not explain why she was omitted from that list. But it is undisputed that Pruitt was first identified as an employee who interacted with Tameca in June 2016, five and a half months after the statute of limitations expired, when CVMC disclosed her name for the first time and revealed that she "saw Tameca Miles on December 28, 2013." Miles substituted Pruitt as a defendant that same month, and Pruitt does not

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argue that Miles failed to exercise due diligence in either identifying her or substituting her as a defendant. Pruitt instead argues that her substitution for a fictitiously named defendant was improper because (1) she was not adequately described as a fictitiously named defendant in the original complaint; and (2) the original complaint did not assert a cause of action against her. We disagree.

Miles's original complaint identified as "Defendant G" any "medical services therapist, technician, or worker who undertook to provide services to [Tameca] [on] the occasion made the basis of this suit, the negligence, breach or contract, or other actionable conduct of whom contributed to cause [Tameca's] death." As an employee of CVMC, Pruitt can reasonably be considered a medical-services worker. Moreover, Pruitt has acknowledged that she attempted to get information from Tameca so that she could register her as a patient. It is therefore at least arguable that Pruitt "undertook to provide services" to Tameca when she first visited the CVMC emergency room on December 28, 2013. Our caselaw does not require that the description of the fictitiously named defendant "perfectly" or "exactly" describe the party that the

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plaintiff eventually seeks to substitute; it requires only an "adequate[]" description. Noland Hosp., 127 So. 3d at 1167. Miles's complaint meets that standard in its substitution of Pruitt.

Pruitt also argues that Miles's original complaint did not assert a claim against her. This Court explained in Ex parte International Refining & Manufacturing Co., 972 So. 2d 784, 789 (Ala. 2007), that "[a] complaint stating a claim against a fictitiously named defendant must contain sufficient specificity to put that defendant on notice of the plaintiff's claim if it were to read the complaint." Moreover, "the complaint must describe the actions that form the basis of the cause of action against the fictitiously named defendant." Id. We have further explained that "[o]ne need not state with more particularity a cause of action against an unknown party as compared to a named party -- the test is the same." Columbia Eng'g Int'l, Ltd. v. Espey, 429 So. 2d 955, 960 (Ala. 1993). Because Miles's wrongful-death action asserts claims against health-care providers, the provisions of the Alabama Medical Liability Act apply; § 6-5-551, Ala. Code 1975, of that Act requires a plaintiff to include in his or her

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complaint "a detailed specification and factual description of each act and omission alleged by [the] plaintiff to render the health care provider liable."

Miles's original complaint alleged that the fictitiously named defendants committed the following negligent and wanton acts that proximately resulted in Tameca's death: (1) they failed "to timely and properly triage, evaluate or diagnose Tameca's complaints of severe headache, altered mental status, confusion, etc."; (2) they failed "to timely and properly treat Tameca's complaints of severe headache, altered mental status, confusion, etc."; (3) they failed "to timely and properly notify physician(s) of Tameca's symptoms and her emergency serious medical condition"; and (4) they "acted outrageously by failing to diagnose, monitor, manage, or treat Tameca, a seriously ill patient, but rather having her arrested and sent to jail." Miles argues that Pruitt, as the admissions clerk, represented the first step in the "triage" process and that she bore some responsibility in determining that Tameca was in urgent need of care. Pruitt, however, states that she had no such responsibility for evaluating a patient or determining whether a physician was needed.

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It is not the role of this Court to make a factual determination of Pruitt's job responsibilities; it is enough for us to note that Miles's original complaint is sufficiently specific to assert a cause of action against Pruitt. For these reasons, the trial court did not err in allowing Miles to substitute Pruitt for a fictitiously named defendant under Rule 9(h).⁶ Accordingly, Pruitt's petition for the writ of mandamus is due to be denied.

D. Kathy Russell

Russell states that Miles should not have been allowed to rely upon Rule 9(h) to avoid the statute of limitations with regard to the claims asserted against her because, she argues, (1) she was not adequately identified in the original complaint; (2) the original complaint did not assert a cause of action against her; and (3) Miles did not exercise due diligence in attempting to discover her identity. Noland

⁶Gulas and Pruitt filed a joint petition. Although the argument in that petition about whether Miles's original complaint was sufficiently specific primarily addressed Pruitt's circumstances, Gulas states that the argument applies with equal force to her. Because Gulas and Pruitt were similarly involved in this case -- both were administrative employees who attempted to get identifying information from Tameca so that she could be registered as a patient in the CVMC computer system -- we also reject this argument as it relates to Gulas.

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Hosp., 127 So. 3d at 1167. For the reasons that follow, we agree that Miles did not state a cause of action against Russell in the body of the original complaint; thus, Russell's summary-judgment motion was due to be granted.

As explained in the preceding section, "[a] complaint stating a claim against a fictitiously named defendant must contain sufficient specificity to put that defendant on notice of the plaintiff's claim if it were to read the complaint." International Refining & Mfg., 972 So. 2d at 789. Miles's original complaint alleges that the fictitiously named defendants committed the following negligent and wanton acts that proximately caused Tameca's death: (1) they failed "to timely and properly triage, evaluate or diagnose Tameca's complaints of severe headache, altered mental status, confusion, etc."; (2) they failed "to timely and properly treat Tameca's complaints of severe headache, altered mental status, confusion, etc."; (3) they failed "to timely and properly notify physician(s) of Tameca's symptoms and her emergency serious medical condition"; and (4) they "acted outrageously by failing to diagnose, monitor, manage, or treat

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Tameca, a seriously ill patient, but rather having her arrested and sent to jail."

It is undisputed that Russell was never in the emergency room or involved in any attempt to provide medical services to Tameca. Rather, Russell is alleged only to have told the security guard Hill -- after he telephoned her to describe a disturbance in the emergency room -- "if you think you need to call the police, call them." Thus, Russell did not summon the police, instruct Hill to summon the police, or make the decision to have Tameca arrested and taken to jail; she merely told Hill he could contact the police if he thought the situation warranted it. Because none of the allegedly tortious acts described in Miles's complaint adequately describe the act Russell is accused of committing -- telling the security guard he could call the police if he thought it was necessary to do so -- Miles cannot use Rule 9(h) to avoid the statute of limitations and assert an otherwise untimely claim against Russell. The trial court therefore erred by denying her motion for a summary judgment.

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Conclusion

In May 2015, Miles sued CVMC and other fictitiously named defendants, including unnamed CVMC employees, alleging that their wrongful acts had caused the December 2013 death of Tameca. Upon learning that CVMC employees Blanchard, Gulas, Pruitt, and Russell were allegedly involved in the police removing Tameca from the CVMC emergency room before she was treated for what was ultimately determined to be bacterial meningitis, Miles filed a series of amendments substituting those employees for the fictitiously named defendants. Those CVMC employees all subsequently moved the trial court to enter summary judgments in their favor, arguing that the claims Miles had asserted against them were untimely because they had not been named defendants within the two-year period allowed by the statute of limitations governing wrongful-death actions. After the trial court denied those motions, the CVMC petitioners sought mandamus relief in this Court.

As discussed above, we deny the petitions filed by Blanchard, Gulas, and Pruitt. We grant Russell's petition, however, because Miles's May 2015 complaint did not state a cause of action against her. The trial court is directed to

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vacate the order denying Russell's summary-judgment motion and to enter an order granting the same.

1180317 -- PETITION GRANTED; WRIT ISSUED.

Bolin, Shaw, Wise, Bryan, and Stewart, JJ., concur.

Mendheim, J., concurs in the result.

Parker, C.J., recuses himself.

1180318 -- PETITION DENIED.

Bolin, Shaw, Wise, Bryan, Mendheim, and Stewart, JJ.,
concur.

Parker, C.J., recuses himself.

1180319 -- PETITION DENIED.

Bolin, Shaw, Wise, Bryan, Mendheim, and Stewart, JJ.,
concur.

Parker, C.J., recuses himself.