IN THE SUPREME COURT OF GUAM

CHRISTOPHER ALLEN,
Plaintiff-Appellant,

v.

IAN C. RICHARDSON, in his Individual Capacity,
Defendant-Appellee.

Supreme Court Case No.: CVA17-004
Superior Court Case No.: CV0194-16

OPINION

Cite as: 2020 Guam 13

Appeal from the Superior Court of Guam
Argued and submitted on October 23, 2017
Hagåtña, Guam

Appearing for Plaintiff-Appellant:
Christopher Allen, *pro se*
PMB 386
1270 N. Marine Corps Dr., Ste. 101
Tamuning, GU 96913

Appearing for Defendant-Appellee:
Ian Richardson, *pro se*
P.O. Box 6065
Merizo, GU 96916

BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.[1]

CARBULLIDO, J.:

[1] Plaintiff-Appellant Christopher Allen appeals from a final judgment of the Superior Court dismissing his claims related to an incident at the hospital where Defendant-Appellee Ian C. Richardson, M.D., allegedly treated him without his consent. Because the Superior Court correctly concluded that Allen's claims were barred by a one-year statute of limitations, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Allen sued Richardson alleging fifteen causes of action for various intentional and negligence-based torts.[2] The complaint related to an incident where Allen was transported to Guam Memorial Hospital ("GMH") for heart and breathing complications. That day, Richardson was the attending physician in the emergency room at GMH. When Allen arrived, he specifically instructed an emergency room nurse he should not be treated by Richardson. Allen told the nurse he was afraid Richardson would "exact revenge" against him in his weakened state because of a prior lawsuit Allen had filed against Richardson. Richardson still tried to provide Allen medical care. Allen tried to refuse the care from Richardson but did not succeed. In his complaint, Allen claims that Richardson's conduct "departed from the standard of care of what any reasonable medical practitioner under the same circumstances would have done, and [he] departed from his duty to obtain consent from Plaintiff before touching him and acting as his physician." Record on Appeal ("RA"), tab 1 ¶ 19 (Verified Compl., Mar. 9, 2016). Allen also asserts that at all relevant times, he was "involuntarily . . . under the care of" Richardson. *Id.* ¶ 7.

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was argued and submitted.

[2] As this is an appeal from a motion to dismiss, we recite the facts in the light most favorable to the non-moving party. *See Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 2.

[3] Richardson also allegedly contacted Allen's personal physician several times to have the personal physician persuade Allen to drop the separate, earlier-filed lawsuit. Allen alleges these conversations breached Richardson's duty of confidentiality and violated the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") by gaining access to his medical files without his consent.

[4] Among the allegations, Allen states that he "is – NOT – currently suing for malpractice." *Id.* ¶ 2. He also alleges, however, that Richardson's conduct constituted "professional misconduct," *id.* ¶ 39, and that Richardson "violated the accepted codes of professional misconduct and ethics, which recognize the special nature of physician-patient relationships," *id.* ¶ 41. Allen also alleges that Richardson's "conduct was unprofessional, without consent, and invaded the Plaintiff's confidential private medical information, thus breaching the privacy and trust owed to him between the Plaintiff and his physician." *Id.*; *see also id.* ¶¶ 42-44 (making similar allegations). Each cause of action in Allen's complaint refer to or rely on Richardson's standard of care as a treating physician, his failure to obtain proper consent before performing medical services, or Allen's patient rights (often referring to HIPAA).

[5] Richardson moved to dismiss Allen's complaint for several reasons. The Superior Court agreed that the complaint failed because Allen's claims were barred by the one-year statute of limitations in 7 GCA § 11308 and Allen failed to arbitrate his claims before suing under the Mandatory Medical Malpractice Arbitration Act, 10 GCA § 10100 *et seq*. The trial court dismissed the action, and Allen timely appealed.

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II. JURISDICTION

[6] This court has jurisdiction over appeals from a final judgment entered by the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-148 (2020)); 7 GCA §§ 3107(b), 3108(a), 25102(a) (2005).

III. STANDARD OF REVIEW

[7] We review a trial court's grant of a motion to dismiss *de novo*. *See Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 9 (citing *Perez v. Guam Hous. & Urban Renewal Auth.*, 2000 Guam 33 ¶ 9). The trial court's determination that a claim is time-barred by a statute of limitations is a question of law reviewed *de novo*. *See Gayle v. Hemlani*, 2000 Guam 25 ¶ 22. "When the statute of limitations begins to run is also [a] question of law reviewed *de novo*." *Id.* But, if the question involves what a reasonable person should know, then it is a mixed question of law and fact reviewed for clear error. *Id.*

[8] Because both parties appear *pro se* before the court, we give deference to their litigation efforts. *See, e.g.*, *McGhee v. McGhee*, 2008 Guam 17 ¶ 11. We also "provide lenient treatment" of those efforts and give the parties "every fair opportunity to present their case[s]." *Caspino v. Caspino*, DCA Civ. No. 87-00065A, S.C. Domestic No. 1445-86, 1988 WL 242619, at *2 (D. Guam App. Div. June 7, 1988) (alteration in original) (citation omitted).

IV. ANALYSIS

A. Allen's Claims for Damages Arise from Medical Treatment and are Barred by 7 GCA § 11308's One-Year Statute of Limitations

[9] The parties dispute which statute of limitations applies to Allen's claims. In Richardson's view, he is being sued for medical malpractice. He contends that Allen's claims are barred because they are subject to the one-year statute of limitations applicable to claims arising from medical treatment. *See* 7 GCA § 11308 (2005). Allen responds, however, that he is not suing for medical

malpractice, but for battery stemming from Richardson's treatment of him without consent. Allen asserts his claims are timely because he brought them within the two-year limitations period applicable to claims of assault, battery, and false imprisonment. *See* 7 GCA § 11306(a) (as amended by Guam Pub. L. 31-007:2 (Mar. 9, 2011)). When read deferentially and with Allen's appellate brief, the *pro se* complaint appears to raise a claim of medical battery. Whether characterized as a medical malpractice claim or a medical battery claim, Allen's actions are barred by a one-year statute of limitations because his claims for damages arise from Richardson's medical treatment of him.

[10] Title 7 GCA § 11308 reads, in part: "An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced with one (1) year from the date when the injury is first discovered . . . ." 7 GCA § 11308. In most cases, this statute applies to limit medical malpractice actions. *See, e.g.*, *Custodio v. Boonprakong*, 1999 Guam 5 ¶ 14 (citing 7 GCA § 11308 (1996)) ("In order to recover in a medical malpractice action, an individual must initiate suit within one year from the date when the injury is first discovered."). Medical "malpractice" is defined as "any tort or breach of contract based on health care or professional services rendered or which should have been rendered, by a health professional or health care institution to a patient." 10 GCA § 11102(c) (as amended by Guam Pub. L. 29-81:2 (May 9, 2008)). If Richardson is correct in asserting that he is being sued for medical malpractice, and allegations that he treated Allen without consent constitute medical malpractice, then this one-year statute of limitations applies.

[11] However, we must also consider Allen's argument that he is raising a claim for battery, not medical malpractice. The difficulty with Allen's position is this court has yet to affirmatively recognize medical battery as a viable cause of action. *See Levin v. United States*, 2016 Guam 14

¶ 14. Both Allen and Richardson make no mention in their briefs whether this court should now recognize medical battery as a cause of action, and we generally do not address such significant arguments for the first time on appeal. *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 80. In *Levin*, which came to us through a certified question from the District Court of Guam, we assumed without deciding that medical battery is a cause of action and adopted the standard outlined in *Mims v. Boland*, 138 S.E.2d 902 (Ga. Ct. App. 1964), for evaluating effective withdrawals of consent in such cases. *Levin*, 2016 Guam 14 ¶¶ 14-20. We did not decide whether medical battery was a cause of action because "the issue was not explicitly presented to this court in the certification order and because the issue was not briefed by the parties." *Id.* ¶ 14. Here, because the issue was not addressed by the Superior Court and not briefed by the parties, we will follow the same approach and assume without deciding that medical battery is a viable cause of action.

[12] Medical battery is not a universally recognized claim. *See, e.g.*, *Linog v. Yampolsky*, 656 S.E.2d 355, 358 (S.C. 2008) ("In light of the availability of a medical malpractice claim or a civil battery claim to any patient that is injured by a physician, we believe medical battery would constitute an unnecessary and superfluous cause of action."). If it is a valid cause of action in Guam, it occurs when a doctor or other healthcare provider exceeds the scope of the patient's consent for treatment. *See Levin*, 2016 Guam 14 ¶¶ 15-20. The purpose of the medical battery tort is to secure "the interest of the individual's right of freedom from unwanted contacts and invasions upon his body." *Id.* ¶ 15 (quoting *Mims*, 138 S.E.2d at 907). In some jurisdictions, medical battery cases involving a patient's lack or revocation of consent to medical treatment do not give rise to an independent tort and fall within the medical malpractice framework. *See, e.g.*, *Linog*, 656 S.E.2d at 358. "It is not the hostile intent of the defendant but rather the absence of

consent by the plaintiff that is at the core of an action for battery." *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 20. Because of the absence of consent, medical battery may occur when a patient does not know or does not authorize the performance of a medical procedure. *Hensley v. Scokin*, 148 S.W.3d 352, 356 (Tenn. Ct. App. 2003).

[13] To answer the question of which statute of limitations applies to a potential claim for medical battery, we look again to the statute and the meaning of its terms. Title 7 GCA § 11308 provides a one-year limit on claims "arising from any medical, surgical or dental treatment, omission or operation." 7 GCA § 11308. After construing the parties' litigation positions, Richardson asserts that a medical battery claim would still be subject to this limitation because it arises from medical treatment. In Allen's view, 7 GCA § 11306, which provides a two-year limitations period for "[a]n action for assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to, or for the death of, a person caused by the wrongful act or neglect of another," should govern. The plain language of these statutes, when analyzed under traditional principles of construction, demonstrates that Richardson's position should ultimately prevail.

[14] "Arise" also means "[t]o originate; to stem (from)." *Arise*, Black's Law Dictionary (11th ed. 2019). Under a strict application of this definition, a cause of action based on the lack of consent to medical treatment necessarily stems from the medical treatment. If Richardson had never provided medical treatment, there would be no cause of action. Even if we concluded that a medical battery may also plausibly fall under 7 GCA § 11306, we would still conclude that 7 GCA § 11308 would prevail. "It is also 'a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling. . . .'" *Lagueux v. Leonardi*, 85 A.3d 13, 20-21 (Conn.

App. Ct. 2014) (omission in original) (quoting *Comm'r of Pub. Safety v. Freedom of Info. Comm'n*, 48 A.3d 694, 700 (Conn. App. Ct. 2012)); *see also In re I Mina'Trentai Dos Na Liheslaturan Guåhan*, 2014 Guam 24 ¶ 13 ("Where a specific statute appears to conflict with a general statute, the more specific statute prevails."). Here, 7 GCA § 11308 is a limitation specific to only medical-related claims, while 7 GCA § 11306 is more general and applies to all assault and battery claims. Under this analysis, a medical battery claim would be subject to the one-year statute of limitations.

[15] Cases from other jurisdictions support this conclusion. In Texas, for example, the relevant statute of limitations applies to all "health care liability claim[s]," Tex. Civ. Prac. & Rem. Code Ann. § 74.301 (West 2003), which are defined as:

> a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care, or health care, or safety or professional or administrative services directly related to health care, which proximately results in injury to or death of a claimant, whether the claimant's claim or cause of action sounds in tort or contract.

Id. § 74.001(a)(13). In *Diversicare General Partner, Inc. v. Rubio*, 185 S.W.3d 842 (Tex. 2005), the Texas Supreme Court held that the state's medical liability statutes and corresponding statute of limitations applied to a claim that a nursing home failed to adequately protect a resident from a sexual assault by a fellow resident. 185 S.W.3d at 849-50. Applying this reasoning, a Texas appellate court—although in an unpublished case—found that medical battery claims are subject to this statute of limitations. *See Compton v. Jue*, No. 01-16-00412-CV, 2017 WL 3389644, at *5 (Tex. App. Aug. 8, 2017). Similarly, in Ohio, the applicable statute of limitations for medical malpractice applies to any claim that "arises out of the medical diagnosis, care, or treatment of any person," Ohio Rev. Code Ann. § 2305.113(A), (E)(3) (West 2019), and medical battery claims fall within its scope when the factual basis of the complaint relates to medical treatment, *see Amadasu v. O'Neal*, 176 Ohio App. 3d 217, 2008-Ohio-1730, 891 N.E.2d 802, at ¶¶ 6-8. In *Patterson v.*

Vincent, 61 A.2d 416, 418 (Del. Super. Ct. 1948), a Delaware court held that both contract-based and tort-based claims related to medical care were subject to the statute of limitations applicable to medical malpractice claims. The court reasoned that "statute contains no such distinction" between contract-based and tort-based claims and "applies the limitation to all actions for personal injuries." *Patterson*, 61 A.2d at 418. Therefore, "[u]nder the express wording of th[e] statute, it makes no difference whether a claim for malpractice is based upon a breach of contract or upon negligence, nor does it matter whether the plaintiff has an election between the two forms of action." *Id.* Similarly, Mississippi broadly applies a similar statute. In *Chitty v. Terracina*, 2008-CA-00686-COA (¶ 12) (Miss. Ct. App. 2009), 16 So. 3d 774, the appeals court found that an action for fraudulent concealment of a medical diagnosis—an intentional tort—"ar[ose] out of the course of medical, surgical or other professional services." The Mississippi Supreme Court has also determined that a nurse's failures in helping a patient walk to an exit following a shower occurred while she was performing medical services. *See Crosthwait v. S. Health Corp. of Hous., Inc.*, 2010-CT-00526-SCT (¶¶ 12-21) (Miss. 2012), 94 So. 3d 1070.

[16] In the jurisdictions that conclude that medical battery claims are subject to the more general statute of limitations, it usually results from the statute of limitations being limited to negligence-based claims. In California, for example, medical battery based on a patient's complete lack of consent is considered a traditional battery, *see Cobbs v. Grant*, 502 P.2d 1, 8 (Cal. 1972) (in bank), which is subject to the statute of limitations for battery, *see Daley v. Regents of Univ. of Cal.*, 252 Cal. Rptr. 3d 273, 278-79 (Ct. App. 2019). The medical malpractice statute of limitations, however, is limited to claims "against a health care provider based upon such person's alleged professional negligence." Cal. Civ. Proc. Code § 340.5 (West current through 2020 Reg. Sess.). Washington's medical malpractice statute of limitations is also limited to "alleged professional

negligence." Wash. Rev. Code § 4.16.350 (current through 2020 Reg. Sess.). This provision has been interpreted to differentiate between claims of medical battery based on a lack of consent versus a lack of informed consent, which are therefore governed by different statutes of limitation. *See Bundrick v. Stewart*, 114 P.3d 1204, 1208-09 (Wash. Ct. App. 2005) (interpreting Wash. Rev. Code § 7.70.010, which modifies Wash. Rev. Code § 4.16.350); *Collier v. Momah*, No. 60121-1-I, 2008 WL 2581864, at *3, 145 Wash. App. 1027 (Ct. App. June 30, 2008).

[17] In some jurisdictions, there appears to be some internal inconsistency. In Georgia, for example, one panel of the Court of Appeals concluded that medical battery claims fall outside the statute of limitations for medical malpractice claims, *see Gowen v. Cady*, 376 S.E.2d 390, 392 (Ga. Ct. App. 1988), while another panel concluded that such claims are subject to the medical malpractice statute of repose, *see Blackwell v. Goodwin*, 513 S.E.2d 542, 545 (Ga. Ct. App. 1999). Similarly, although in dicta, Tennessee courts have the same dichotomy between the statute of limitations and the statute of repose. *Compare Bailey v. Tasker*, 146 S.W.3d 580, 585 (Tenn. Ct. App. 2004) (finding medical battery not covered by medical malpractice statute of limitations), *with Range v. Sowell*, No. M2006-02009-COA-R3-CV, 2009 WL 3518176, at *7 (Tenn. Ct. App. Oct. 29, 2009) (finding medical battery covered by medical malpractice statute of repose). *See also Shadrick v. Coker*, 963 S.W.2d 726, 732-34 (Tenn. 1998) (finding medical malpractice statute of limitations applicable to claims based upon lack of informed consent, even though Tennessee law considers such claims as sounding in traditional battery).

[18] Finally, employing a more purposive approach, the Colorado Supreme Court found that medical battery falls within a negligence-based statute of limitations for medical malpractice based on "the substance rather than . . . the form." *See generally Maercklein v. Smith*, 266 P.2d 1095, 1098 (Colo. 1954) (en banc). According to the Colorado court, "[i]t has been held that where there

is a statute of limitation relating specifically to those engaged in the practice of the healing arts, such statute shall govern in all actions against physicians and surgeons growing out of their practice and regardless of the form thereof." *Id.* at 1097. But we need not even employ a purposive approach because we can return to the language of our statute. Our statutory language is broad enough to cover medical battery claims when the factual allegations relate to medical treatment.

[19] While the results of other cases are divided, the reasoning from them supports our conclusion. Our statute covering claims from "any medical . . . treatment," 7 GCA § 11308, is broad enough to cover a claim for medical battery based on a patient's lack of consent. The plain language of the statute itself and the differentiation from other jurisdictions' "negligence only" statutes reinforce our interpretation. Potential medical battery claims are subject to a one-year statute of limitations under 7 GCA § 11308.

[20] In some cases, a medical professional may commit a traditional battery while treating a patient, but occurring outside the "medical treatment" context. *See, e.g.*, *Whalen v. Am. Med. Response Nw., Inc.*, 300 P.3d 247, 249-50 (Or. Ct. App. 2013) (discussing alleged sexual battery by paramedic while transporting patient). That is not the case here. In construing Allen's complaint as one for medical battery, we examine his factual allegations against Richardson. *See Amadasu*, 176 Ohio App. 3d 217, 2008-Ohio-1730, 891 N.E.2d 802, at ¶¶ 6-8. In his complaint, Allen alleges that Richardson's conduct constituted "professional misconduct," RA, tab 1 ¶ 39 (Verified Compl.), and that Richardson "violated the accepted codes of professional misconduct and ethics, which recognize the special nature of physician-patient relationships," *id.* ¶ 41. Allen also alleges that Richardson's "conduct was unprofessional, without consent, and invaded the Plaintiff's confidential private medical information, thus breaching the privacy and trust owed to him between the Plaintiff and his physician." *Id.*; *see also id.* ¶¶ 42-44 (making similar

allegations). While Allen claims to not be suing for malpractice, *see id.* ¶ 2, each cause of action in his complaint refers to or relies on Richardson's standard of care as a treating physician, his failure to obtain proper consent before performing medical services, or Allen's patient rights often referring to HIPAA. [3]

[21] In these allegations, Allen is claiming medical battery stemming from a lack of consent to treatment. The crux of Allen's complaint is that Richardson "departed from his duty to obtain consent from the Plaintiff before touching him and acting as his physician." *Id.* ¶ 19. The complaint also states: "the Defendant . . . performed and/or directed the performance of medical procedures on the Plaintiff . . . all **without** the Plaintiff's consent." *Id.* ¶ 51. The complaint alleges this touching occurred during various portions of medical treatment, such as evaluation, drawing and testing blood, and administering drugs. *See, e.g., id.* ¶ 57. It is not dispositive to our analysis whether Allen's claims are medical malpractice or medical battery. The complaint sufficiently alleges that Richardson's alleged conduct occurred in connection with his medical treatment of Allen. Thus, the allegations in the complaint are for damages arising from medical treatment. Allen's medical battery claims, therefore, are subject to the one-year statute of limitations. 7 GCA § 11308.[4] And because the suit was filed on March 9, 2016—more than a year after the alleged incident on March 16, 2014, it is barred by the statute of limitations.

[3] There is no private cause of action under HIPAA. *See, e.g., Acara v. Banks*, 470 F.3d 569, 571 (5th Cir. 2006); *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081-82 (9th Cir. 2007); *Bonney v. Stephens Mem'l Hosp.*, 2011 ME 46, ¶¶ 15-20, 17 A.3d 123, 127-28; *Espinoza v. Gold Cross Servs., Inc.*, 2010 UT App 151, ¶ 8, 234 P.3d 156. If any of Allen's claims could be construed as arising under HIPAA, he has failed to state a claim upon which relief could be granted, and we affirm the trial court's decision on this alternative basis. *See People v. San Nicolas*, 2001 Guam 4 ¶ 29 ("An appellate court may affirm the judgment of a lower court on any ground supported by the record.").

[4] As a final matter, the discovery rule does not apply in this case. Allen was "conscious, coherent, and able to communicate" when arriving at GMH and interacting with Richardson. RA, tab 1 ¶ 17 (Verified Compl.).

B. We Decline to Address the Applicability of the Mandatory Medical Malpractice Arbitration Act

[22] The Superior Court also dismissed Allen's action because he failed to submit it to arbitration under the Mandatory Medical Malpractice Arbitration Act ("MMMAA") before proceeding in court. Because we affirm based on the statute of limitations, we need not reach this issue as it is unnecessary to the disposition of the appeal. *See Hemlani v. Hemlani*, 2015 Guam 16 ¶ 33.

[23] The concurring opinion suggests that by reaching the statute of limitations issue without addressing the MMMAA, we are acting contrary to recent precedent. We note that no party has raised the issue of whether arbitrability must be decided before any other gatekeeping questions. Further, in the *Guam YTK Corp.* cases, *see Guam YTK Corp. v. Port Auth. of Guam*, 2014 Guam 7; *Guam YTK Corp. v. Port Auth. of Guam*, 2019 Guam 12, and the related precedent cited by the concurring opinion, we were applying principles of contract law where the issue of arbitrability was a "matter of consent, not coercion," *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 469, 479 (1989). Because the parties here are dealing with statutorily-mandated arbitration that restricts the right of a party to petition the courts for redress, instead of contractual arbitration, we are not convinced that the *Guam YTK Corp.* cases are unequivocally controlling. Furthermore, based on the allegations in Allen's complaint, it is not clear that a doctor-patient relationship existed. The statute of limitations, however, does not require a doctor-patient relationship, but requires only that an injury arise from medical treatment. That is established by Allen's allegations. Due to the latitude given to *pro se* parties and the fact neither party raises the arbitrability of the statute of limitations issue, we believe the "who decides" question presented by the concurrence is best left for another day.

C. We deny Richardson's Request for Sanctions

[24] Richardson requests this court sanction Allen for filing a frivolous appeal. Appellee's Br. at 11 (May 29, 2017). By submitting appellate filings to this court, a party certifies under Guam Rule of Appellate Procedure 21.1 that "the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law" and that "the allegations and other factual contentions have evidentiary support." Guam R. App. P. 21.1(b)(2)-(3). "An appeal is frivolous if it is objectively 'both baseless and made without a reasonable and competent inquiry.'" *In re Guardianship of Ulloa*, 2014 Guam 32 ¶ 53 (quoting *In re Oka Towers Corp.*, 2000 Guam 16 ¶ 9). In reviewing this case, we determine that Allen raises non-frivolous issues of first impression about the statute of limitations and the scope of the MMMAA. While Allen ultimately does not prevail, his appeal is not frivolous. Richardson's request for sanctions is denied.

V. CONCLUSION

[25] We **AFFIRM** the Superior Court's Judgment of Dismissal.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

MARAMAN, C.J., concurring:

[26] The majority upholds the trial court's dismissal of Allen's claim for filing beyond the statute of limitations. I do not disagree with the majority's analysis but find this holding contrary to our recent precedent. The majority creates confusion as to the trial court's authority in cases requiring arbitration. There is an alternate analysis which reaches the same result. Relying on that reasoning, I respectfully decline to join the majority's reasoning, but I nonetheless concur in the judgment dismissing the case.

[27] In *Guam YTK Corp. v. Port Authority of Guam*, 2014 Guam 7 ("*Guam YTK Corp. I*"), this court held that trial judges are restrained from considering issues brought by the parties but should instead leave these matters for adjudication by the arbitration panel. In *Guam YTK Corp. I*, the trial court entered an order which disposed of substantive issues regarding an arbitration agreement's legality and scope. In paragraph 26 we concluded: "Therefore, because the validity and enforceability of the Lease Agreement is an issue that was clearly and unmistakably reserved for arbitration under section 17.1 of the Arbitration Agreement, the trial court erred in finding that the Lease Agreement was unenforceable." *Guam YTK Corp. I*, 2014 Guam 7 ¶ 26.

[28] Here the trial court usurped the authority of the arbitration panel by finding that the matter must be dismissed on the basis that Allen's action was untimely in violation of the statute of limitations. The majority compounds this error by affirming on that ground. To be consistent with our recent jurisprudence, the trial court should have dismissed solely because Allen failed to commence arbitration as required by the MMMAA.

A. All of Allen's Claims are Subject to the Mandatory Medical Malpractice Arbitration Act

[29] Because both parties appear *pro se* before the court, their arguments are construed liberally. *See, e.g.*, *McGhee v. McGhee*, 2008 Guam 17 ¶ 11 ("Guam case law . . . has recognized that

deference should be given toward a *pro se* party's litigation efforts."); *see also Caspino v. Caspino*, DCA Civ. No. 87-00065A, S.C. Domestic No. 1445-86, 1988 WL 242619, at *2 (D. Guam App. Div. June 7, 1988) ("Courts should not act as advocates for pro se litigants, but should provide lenient treatment of their efforts"). Allen argues on appeal that the trial court erred in finding that he had asserted a medical malpractice claim against Richardson. *See* Appellee's Br. at 5-6. According to Allen, he has asserted a variety of intentional tort claims including "medical battery," "battery," "assault," and "invasion of privacy," which he argues are distinct from a medical malpractice claim premised on a lack of informed consent.[5] *See id.* at 6-10. Implicit in Allen's position is the argument that the MMMAA does not apply to his "medical battery" and other intentional tort claims. Richardson argues, however, that the trial court correctly dismissed Allen's complaint because the claims sound in medical malpractice and they were not properly arbitrated prior to filing suit. *Id.* at 4-7. Richardson additionally argues that Allen's appeal is frivolous and that Allen should be sanctioned. *Id.* at 11.

[30] Under the MMMAA, "[a]ny claim" that is "incident to the acts of [a] health professional" must "be submitted to mandatory arbitration." 10 GCA § 10102 (2005); *see also Villagomez-Palisson v. Superior Court*, 2004 Guam 13 ¶ 8 ("[U]nder the [MMMAA], malpractice claimants are required to submit their claims to mandatory arbitration."). Allen's arguments on appeal rest upon the assumption that his claims are not subject to the MMMAA. He argues that only medical malpractice claims fall under the MMMAA, while his intentional tort claims are not subject to mandatory arbitration under 10 GCA § 10102. The MMMAA, however, applies to a broad range of conduct; it is written in extremely broad terms and applies to claims of intentional torts and

[5] Whether the tort of "medical battery" is a cognizable cause of action under Guam law is not yet a settled question. *See Levin v. United States*, 2016 Guam 14 ¶ 14. We do not resolve this question today.

negligence-based malpractice claims alike. *See* 10 GCA § 10102. For this reason, all of Allen's claims are subject to the MMMAA regardless of the form in which they are pleaded.

[31] In interpreting a statute, "[i]t is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear legislative intent to the contrary, the plain meaning prevails." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (citations omitted). The MMMAA provides the following:

> Any claim that accrues or is being pursued in the territory of Guam, whether in tort, contract, or otherwise, shall be submitted to mandatory arbitration pursuant to the terms of this Chapter if it is a controversy between the patient . . . and the health professional or health care institution, or their employees or agents, and is based on malpractice, tort, contract, strict liability, or any other alleged violation of a legal duty incident to the acts of the health professional or health care institution, or incident to services rendered or to be rendered by the health professional or health care institution.

10 GCA § 10102. The legislature's use of the word "tort" as opposed to merely "malpractice" indicates that the statute applies more broadly than to only negligence-based claims. *See id.* Furthermore, the statute does not simply apply to acts of medical care within the scope of the doctor-patient relationship; it applies to claims concerning "legal dut[ies] *incident* to the acts of the health professional." *Id.* (emphasis added). This is broad enough to include the legal obligation not to perform medical care when such care is knowingly and expressly refused, as well as all other claims asserted by Allen.

[32] In addition to section 10102, the next section of the MMMAA also supports a reading that all of Allen's claims are covered under the Act. The procedure for initiating arbitration under the MMMAA is set forth in section 10103, which specifically requires a petitioner to "outline the factual basis of the claim and the alleged acts of negligence *or wrongdoing* of the respondent or respondents." 10 GCA § 10103 (2005) (emphasis added). This section of the statute includes the more general term "wrongdoing" along with the reference to "negligence." *Id.* The phrase

"negligence or wrongdoing" encompasses both intentional and negligence-based torts. *See Thompson v. Long*, 484 S.E.2d 666, 721 (Ga. Ct. App. 1997) (finding that statutory phrase "negligent *or wrongful* act or omission" was broad enough to incorporate intentional torts in medical malpractice actions).

[33] Even if the MMMAA mandated that only malpractice claims were subject to arbitration, the definition of "malpractice" contained in the MMMAA encompasses intentional torts, including medical battery claims to the extent such claims are cognizable under Guam law. The term "malpractice," as used in the MMMAA, is defined as "*any tort* or breach of contract based on health care or professional services rendered or which should have been rendered by a health professional or a health care institution to a patient." 10 GCA § 10101(d) (2005) (emphasis added). The term "any tort" encompasses more than negligence-based malpractice. *See, e.g.*, *Herrera v. Superior Court of L.A. Cty.*, 204 Cal. Rptr. 553, 557 (Ct. App. 1984) (stating that "[t]he arbitration provision's own definition of malpractice obviously includes more than negligence" and finding that medical battery claim needed to be arbitrated); *Doe v. City & Cty. of Honolulu*, 6 P.3d 362, 372 (Haw. Ct. App. 2000) ("The statutory definition of a 'medical tort' includes intentional acts and negligent acts and acts for proper purposes and acts for improper purposes.").

[34] The import of this statute is clear: it applies to all tort claims—both negligent and intentional—between a patient and health care provider, including claims that medical care was provided without appropriate consent. The MMMAA's legislative history and its precursor legislation support this interpretation. In 1975, Guam enacted the Medical Malpractice Claims Mandatory Screening and Mandatory Arbitration Act. *See* Guam Pub. L. 13-115:2 (Dec. 23, 1975) (originally codified as Guam Gov't Code § 9990 *et seq.* (1977)). This predecessor legislation, however, was found to be unenforceable in *Awa v. Guam Memorial Hospital Authority*, 726 F.2d

594, 596 (9th Cir. 1984). The legislature responded to the *Awa* decision several years later by passing Guam Public Law 21-043 (Sept. 18, 1991). This Act repealed the predecessor act in its entirety, *see id.* § 1, and replaced it with the MMMAA, *see id.* § 2. And while "the legislature did not include a statement of purpose or policy when enacting the [MMMAA]," we have observed that the MMMAA "was passed as a result of the perceived problem associated with the increase in the cost of malpractice insurance, and even its unavailability." *Villagomez-Palisson*, 2004 Guam 13 ¶¶ 29-30. Other courts have relied on similar policy reasons for applying mandatory arbitration statutes to both intentional and negligence-based torts. *See, e.g.*, *City & Cnty. of Honolulu*, 6 P.3d at 372; *Herrera*, 204 Cal. Rptr. at 556-58. Hawaiian courts, for example, have found that a similar policy concerns counsel in favor of reading mandatory arbitration provisions "to maximize the [mandatory arbitration] process as a tool to screen, settle, limit, and/or streamline potential lawsuits arising out of health-care-related claims." *Lee v. Haw. Pac. Health*, 216 P.3d 1258, 1267 (Haw. Ct. App. 2009).

[35] In his complaint, Allen premises his claims upon "a legal duty incident to the acts of the health professional or health care institution, or incident to services rendered or to be rendered by the health professional or health care institution, or their employees or agents." Clearly his claims were required to be arbitrated under the terms of the MMMAA.[6] *See* 10 GCA § 10102. Allen's failure to abide by the "mandatory" procedures set forth in the MMMAA prior to filing suit presented a valid defense against his claims. *See Fort Bend Cty., Tex. v. Davis*, -- U.S. --, 139 S. Ct. 1843, 1851-52 (2019).

[6] The term "patient" is not defined under the MMMAA. *See* 10 GCA § 10101. Although it could be argued that Allen was not a "patient" of Richardson because he never consented to his care, Allen specifically alleged in his complaint that he sought medical care at GMH and that Richardson was an employee or agent of GMH. *See* RA, tab 1 at 2, 4 (Verified Compl.). GMH is a "health care institution" as defined in the MMMAA. *See* 10 GCA § 10101. Allen was a "patient" of GMH and its "employees or agents" within the meaning of the MMMAA on the facts of this case as set forth in Allen's Verified Complaint.

[36] As set forth in 10 GCA § 10114, if a court is satisfied that a claim was required to be arbitrated under the MMMAA, it "shall *upon application of one of the parties*, stay all proceedings in the action until such arbitration has been had in accordance with the terms of this chapter." 10 GCA § 10114 (2005) (emphasis added). Richardson did not make an application to stay proceedings in this case; he sought only dismissal of the complaint. *See* RA, tab 10 at 15-16 (Def.'s Mot. Dismiss, Apr. 5, 2016). The trial court therefore did not abuse its discretion in utilizing its inherent authority to dismiss Allen's complaint for failing to abide by the mandatory pre-suit requirements of the MMMAA. *See, e.g.*, *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000); *Bercovitch v. Baldwin Sch., Inc.*, 133 F.3d 141, 156 & n.21 (1st Cir. 1998); *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992); *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988). *Compare* 9 U.S.C.A. § 3 (2006), *with* 10 GCA § 10114.

B. Conclusion

[37] In sum, I would find that the trial court's dismissal was appropriate due to Allen's failure to comply with the arbitration requirements of Guam's MMMAA. I join the majority in affirming the trial court's Judgment dismissing the action.

/s/
KATHERINE A. MARAMAN
Chief Justice