Circuit Court for Prince George's County
Case Nos. CAL20-13405, CAL22-00621

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2211

September Term, 2022

THOMAS WILLIAM HITT

v.

DIMENSIONS HEALTHCARE CORPORATION, ET AL.

Graeff,
Albright,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Albright, J.

Filed: March 21, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Thomas William Hitt appeals the Circuit Court for Prince George's County's grant of summary judgment to Appellees Cullen K. Griffith, MD; Jide Tinubu, MD; and Dimensions Healthcare Corporation ("Dimensions"). Mr. Hitt alleged that Dr. Griffith and Dr. Tinubu, and their employer, Dimensions, were liable for negligent treatment of two toe fractures that ended in malunions of Mr. Hitt's second and third metatarsals. The circuit court granted summary judgment to Appellees on the basis that Mr. Hitt's claims against Appellees were time-barred.

Mr. Hitt presents one question for us on appeal:

> Did the trial court err in granting Appellees['] Motion for Summary Judgment based on the statute of limitations where the facts of when Appellant knew or should have known of Appellees' negligence were in dispute?

As we explain below, we agree that the circuit court erred in granting summary judgment. Accordingly, we reverse the circuit court's judgment.

BACKGROUND

Initial Treatment at PGHC

On January 16, 2017, Mr. Hitt was involved in a single-car accident that resulted in substantial, life-threatening injuries. He received emergency treatment at a Dimensions facility, Prince George's Hospital Center (PGHC). Due to the severity of his injuries, Mr. Hitt remained hospitalized at PGHC for over six weeks, much of which he spent under sedation and intubation.

The most significant of Mr. Hitt's multiple injuries was an open, comminuted fracture of his right femur.[1] This case, however, involves two smaller injuries: fractures of the second and third metatarsals on Mr. Hitt's right foot.[2] Mr. Hitt's care team did not discover the metatarsal fractures until January 27, 2017, when a right foot x-ray was performed because of observed bruising and discoloration. That x-ray revealed "fractures . . . of the distal second and third metatarsals with mild angulation."[3]

Appellee Dr. Griffith took over Mr. Hitt's orthopedic care on January 27, 2017. After consulting the results of the right foot x-ray, Dr. Griffith wrote a treatment note indicating the plan to "place a hard cast shoe" to treat Mr. Hitt's metatarsal fractures. Dr. Griffith did not follow up on this plan, and Mr. Hitt did not receive a hard cast shoe.

Appellee Dr. Tinubu took over Mr. Hitt's orthopedic care from Dr. Griffith on or about February 5, 2017. Dr. Tinubu also did not place a hard cast shoe or provide any

[1] The femur, or thigh bone, is the long leg bone running from the hip to the knee. An "open" fracture, also known as a compound fracture, occurs when there is an open wound in the skin near the fractured bone. The term "comminuted" refers to a fracture in which a bone is broken into three or more pieces. Unless otherwise specified, definitions of medical terms appearing here are derived from the Physician's Desk Reference (PDR) Medical Dictionary, Third Edition.

[2] The metatarsals are five long bones in the foot that run from the midfoot to the base of each toe. Starting from the midfoot and moving towards the toes, each metatarsal is divided into a base, shaft, neck, and head. The head of each metatarsal connects to phalanges, which are the group of two or three small bones that comprise each toe. Here, Mr. Hitt's medical records indicate that his metatarsal fractures were located between the head and neck of his second and third metatarsals.

[3] In the context of bone fractures, angulation means that a fractured bone has moved out of its normal alignment.

other stabilizing or immobilizing treatment for Mr. Hitt's metatarsal fractures. Dr. Tinubu later testified to his belief that Mr. Hitt's metatarsal fractures would heal normally without stabilization or immobilization, especially considering that due to Mr. Hitt's severe right femur fracture he was to remain on strict bed rest with his lower right leg fully immobilized.

Rehabilitation at Waldorf Center

On February 27, 2017, Mr. Hitt was discharged from PGHC and transferred to the Waldorf Center, an in-patient rehabilitation facility. Mr. Hitt asserts that he was at this point unaware of his metatarsal fractures, and that his providers at the Waldorf Center were similarly unaware because the fractures were not indicated in the records that PGHC provided upon Mr. Hitt's transfer.

On or about April 27, 2017, Mr. Hitt told Waldorf Center staff that his right foot would turn red when he sat up. A foot x-ray was then ordered that indicated "prior fracture second through fourth [sic] metatarsals." Mr. Hitt had a follow-up visit with Dr. Tinubu on May 2, 2017, at which Mr. Hitt's primary complaint was the discoloration of his right foot. After reviewing the April 28 x-ray and examining Mr. Hitt's foot, Dr. Tinubu opined that the fractures were healing properly, although he also noted "some lateral deviation of the lesser toes."[4] Dr. Tinubu later deposed that he believed at the time that, even if Mr. Hitt's metatarsals had minor angulation or deviation, they were "still

[4] At that visit Dr. Tinubu also provided Mr. Hitt with a printout containing metatarsal fracture care instructions. Thus, there is no dispute that Mr. Hitt had actual knowledge of his metatarsal fractures no later than May 2, 2017.

aligned to some degree and functionally no longer ha[d] consequences." He also testified to his belief that Mr. Hitt's foot symptoms, including the discoloration, resulted from vascular problems incidental to leg trauma, not the metatarsal fractures.

During the May 2 visit, Dr. Tinubu also cleared Mr. Hitt to try weight-bearing on his right foot for the first time since the accident. Mr. Hitt was unable to do so. At a deposition taken in 2021, Mr. Hitt testified, "[w]hen I first put weight on my foot it wouldn't absorb the weight. It started bouncing up by itself so all that stuck in my mind that something possibly could be wrong."

Dr. Tinubu saw Mr. Hitt several more times in May and June 2017, including for a knee manipulation performed under anesthesia. His final visit with Mr. Hitt was on June 29, 2017.

Subsequent Treatment

Mr. Hitt was discharged home from the Waldorf Center at the beginning of August 2017. In the following months, Mr. Hitt had regular follow-ups related to his injuries with his primary care provider and orthopedists. X-rays taken in October 2017 and February 2018 suggested that Mr. Hitt's metatarsal fractures were healing without complications.[5]

Nonetheless, Mr. Hitt continued to experience pain and difficulty bearing weight on his right foot. In February 2018, he sought a second opinion from University of

[5] The imaging report from the October 2017 x-ray indicated "mild lateral angulation at the neck of the second and third metatarsals consistent with old healed fractures." Similarly, the February 2018 x-ray found "likely old healed fractures of the second and third metatarsal necks."

Maryland Orthopaedic Associates, PA (UMOA). Mr. Hitt saw several providers at UMOA led by orthopedist Dr. Robert O'Toole (collectively, "UMOA providers"). The UMOA providers speculated that the underlying cause of Mr. Hitt's right foot symptoms might be a bunion deformity[6] or metatarsophalangeal osteoarthritis,[7] but they did not reach a final differential diagnosis for Mr. Hitt's condition, which they variously referred to as a "toe deformity[,]" a "foot deformity[,]" and "bony abnormalities[.]"[8] The UMOA providers identified Mr. Hitt's metatarsal fractures in an x-ray taken in February 2018

[6] A bunion, or hallux valgus, is a deformity affecting the big toe in which the metatarsal bone of the big toe shifts out toward the midline while the phalanges turn inward toward the lesser toes. Thus, bunions often present with a pronounced bump at the metatarsophalangeal joint of the big toe. *See generally Bunion*, NAT'L LIBRARY OF MED., https://medlineplus.gov/genetics/condition/bunion/ (last updated Aug. 1, 2018).

[7] The term "metatarsophalangeal" refers to the metatarsals, the phalanges, and the articulations between them. Osteoarthritis, sometimes also called osteoarthrosis, is a disease characterized by degeneration of the cartilage in a joint.

[8] The phrase "toe deformity" comes from the indication for a CT scan performed in March 2018. That indication reads: "[Motor vehicle accident] with toe deformity and decreased range of motion." The phrase "foot deformity" comes from Dr. O'Toole's treatment notes following a March 2018 visit with Mr. Hitt. Following a physical examination, Dr. O'Toole wrote: "Right lower extremity; 5/5 EHL [i.e., extensor hallucis longus], tibialis, and gastrocsoleus, but of course, he has limited EHL function due to this foot deformity." Finally, the reference to "bony abnormalities" is from a treatment plan written up by Dr. O'Toole's colleague, CRNP Stephen Thomas Breazeale, following a visit with Mr. Hitt in late February. After discussing the possibility of right foot surgery with Mr. Hitt, CRNP Breazeale wrote: "[Mr. Hitt] will obtain a CAT scan of his right foot to reevaluate the bony abnormalities for surgical planning." With respect to that "surgical planning[,]" we note that although Dr. O'Toole had previously speculated that Mr. Hitt might "perhaps [need] something done on the foot[,]" the UMOA providers' nonspecific plans for surgery on Mr. Hitt's right foot did not proceed any further after Mr. Hitt's February visit with CRNP Breazeale. In March, after reviewing the results of the CT scan referred to by CRNP Breazeale, Dr. O'Toole and Mr. Hitt opted instead for a second knee manipulation that Dr. O'Toole performed the following month.

and a CT scan[9] taken in March 2018, but they made no mention of malunion or other complications and characterized the fractures as "old [and] healed[.]"[10]

In early January 2019, Mr. Hitt reported increased pain and greater difficulty bearing weight on his right foot. A CT scan performed later that month revealed "[h]ealed fracture deformity of the second and third metatarsal head neck junctions." Dr. O'Toole subsequently referred Mr. Hitt to a foot and ankle specialist who confirmed the diagnosis of metatarsal fracture malunions[11] and discussed treatment options, including surgery.

Procedural History

[9] A CT or computed tomography scan uses computer processing to synthesize x-ray images taken from many different directions and angles, thus creating detailed cross-sectional images. The older term "CAT scan"—CAT is short for "computed axial tomography"—is synonymous.

[10] The x-ray taken in February 2018 showed "likely old healed fractures of the second and third metatarsal necks[,]" but the accompanying imaging report made no mention of angulation of the metatarsals. Additionally, no mention was made of osteopenia, arthritis, or a bunion deformity. A "suggestion for an old healed fracture…at the proximal phalanx of the great toe" was also noted. The March CT scan made more detailed findings. With respect to the metatarsal fractures, an "old healed fracture of the neck of the second metatarsal" was noted, although no mention was made of the third metatarsal fracture. Other findings included a bunion deformity and various hyperextension, flexion, and subluxation of the joints of the big toe; severe osteopenia; and "hyperextension at the MTPs [metatarsophalangeal joints] of the lesser toes with flexion at the PIPs [proximal interphalangeal joints][,]" also described as "[a]pparent hammertoes."

[11] For purposes of this opinion, we consider the terms "healed fracture deformity" and "malunion" to be equivalent. We note that expert witness Dr. Thomas M. DeBerardino opined that the term malunion "just means not normally united" and that a fracture malunion cannot be diagnosed "until healing has occurred[.]"

In February 2020, Mr. Hitt filed a complaint in the Health Care Alternative Dispute Resolution Office ("HCADRO") against Dimensions and two of its employees, Dr. Gabriel Ryb and CRNP Laurie Yancey, who had provided emergency care following Mr. Hitt's accident. Mr. Hitt alleged that the providers breached the applicable standard of care in that they (1) did not inform him of the metatarsal fractures, (2) did not inform subsequent providers at the Waldorf Center of the metatarsal fractures, and (3) did not provide appropriate medical treatment to stabilize the metatarsal fractures. Mr. Hitt elected to waive arbitration pursuant to Maryland Code, Courts and Judicial Proceedings ("CJP") Section 3-2A-06B and subsequently filed his complaint in the circuit court in July 2020.

In November 2021 Mr. Hitt filed a second complaint in HCADRO, this one against Appellees. Mr. Hitt's allegations against Appellees were substantially the same as those in his first complaint. Mr. Hitt again elected to waive arbitration and filed his second complaint in the circuit court in January 2022; that complaint became this appeal.[12]

At Mr. Hitt's request, the circuit court consolidated the two claims. Appellees moved for summary judgment, arguing that Mr. Hitt's claims against them were time-barred because they had accrued more than three years before he filed his second

[12] Under CJP Section 5-109(d), filing a complaint in HCADRO is deemed "the filing of an action" for limitations purposes. Thus, for limitations purposes Mr. Hitt's complaint against Appellees was filed in November 2021—that is, when he initially filed in HCADRO—not January 2022, when he filed in the circuit court.

complaint in November 2021.[13] The circuit court heard argument on Appellees' summary judgment motion and took the matter under advisement. On the first day of trial, the circuit court granted Appellees' summary judgment motion on the record.[14] The circuit court did not explain its reasoning or issue a written order. This timely appeal followed.

STANDARD OF REVIEW

We review a circuit court's grant of summary judgment *de novo*. *Wadsworth v. Sharma*, 479 Md. 606, 616 (2022). Summary judgment is appropriate when a circuit court finds "that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). On appeal, "we conduct an independent review of the record to determine whether a genuine dispute of material fact exists and whether the moving party is entitled to judgment as a matter of law." *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694 (2015). In doing so, we "examine[] the same information from the record and determine[] the same issues of law as the trial court." *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478–79 (2007). Additionally, "[w]e review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). Nonetheless,

[13] The individual defendants named in Mr. Hitt's first complaint did not join Appellees' motion and did not otherwise argue that the complaint, which was filed in February 2020, was time-barred.

[14] Following the grant of summary judgment to Appellees, the trial proceeded as to the claims against the defendants named in Mr. Hitt's first complaint. The jury ultimately rendered a defense verdict, and Mr. Hitt did not appeal.

that "our appellate review is premised on assumptions favoring the non-moving party does not mean that the party opposing the motion for summary judgment prevails necessarily." *Hamilton v. Kirson*, 439 Md. 501, 522 (2014). Instead, "'in order to defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence.'" *Id.* (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993)). "A genuine dispute of material fact exists when there is evidence 'upon which the jury could reasonably find for the plaintiff.'" *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (quoting *Beatty*, 330 Md. at 739).

DISCUSSION

This case turns on when Mr. Hitt's claims against Appellees accrued. The parties agree that the relevant limitations period is set out in CJP Section 5-109(a)(2),[15] which states that a malpractice claim must be filed within "[t]hree years of the date the injury was discovered." It is also undisputed that Mr. Hitt filed the complaint at issue here in November 2021. Thus, if Mr. Hitt's injury was "discovered"—and his claims thereby

[15] Section 5-109(a) reads in full:

> (a) An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider, as defined in § 3-2A-01 of this article, shall be filed within the earlier of:
>
> (1) Five years of the time the injury was committed; or
>
> (2) Three years of the date the injury was discovered.

There is no dispute that the relevant period in this case is the three-year period in subsection (2), not the five-year period in subsection (1).

accrued—before November 2018, Mr. Hitt's claims against Appellees would have been time-barred. Appellees maintain that Mr. Hitt's claims accrued "as early as May 2017 and certainly no later than March 2018." Mr. Hitt argues that his claims did not accrue until January 2019, when a CT scan revealed that his metatarsal fractures had healed in malunion. Specifically, Mr. Hitt contends that the January 2019 scan's finding of "healed fracture deformit[ies]" was the first indication to him, or to his providers, that his metatarsal fractures had healed in malunion.

On appeal, Mr. Hitt argues that the circuit court erred in granting Appellees' motion for summary judgment because there were genuine disputes of material fact as to when his claims accrued. We agree.

I. Relevant Law

Maryland courts follow the "discovery rule,"[16] according to which a claim accrues for limitations purposes when a prospective plaintiff has notice of the alleged injury that is the basis of the claim. A prospective plaintiff is on notice when she has "actual

[16] Since *Poffenberger v. Risser*, 290 Md. 631 (1981), the discovery rule has generally been held to apply in all Maryland civil cases. *See Windesheim*, 443 Md. at 327 ("In *Poffenberger v. Risser*, . . .we made [the discovery] rule generally applicable in all civil actions."). Maryland courts have subsequently considered whether, as a matter of legislative intent, specific statutory provisions including CJP § 5-109(a) create exceptions from the discovery rule. *See generally Thomas v. Shear*, 247 Md. App. 430, 448 (2020) (noting that CJP § 5-109(a) has "sparked confusion and generated at least six certified questions to the Court of Appeals since its enactment" and listing cases). But in *Piselli v. 75th St. Med.*, the Maryland Supreme Court held that CJP § 5-109(a)(2) does not create such an exception and held that the provision's "unambiguous language" reflects the traditional Maryland discovery rule as set out in *Poffenberger* and subsequent cases. 371 Md. 188, 203 (2002).

knowledge[,]" either express or implied, of the alleged injury. *Poffenberger v. Risser*, 290 Md. 631, 637 (1981). Express notice "is established by direct evidence" and it "embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated." *Id.* at 636–37 (cleaned up). Implied notice, also known as inquiry notice, is notice implied from "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." *Id.* at 637 (cleaned up).

To determine whether a plaintiff was on inquiry notice, a factfinder must first ask whether the plaintiff knew, or reasonably should have known, of facts or circumstances that would "cause an ordinarily diligent plaintiff to make an inquiry or investigation that an injury has been sustained." *Ga.-Pac. Corp. v. Benjamin*, 394 Md. 59, 89 (2006). If yes, the factfinder must then determine whether "a reasonably diligent inquiry would have disclosed whether there is a causal connection between the injury and the wrongdoing." *Id.* at 90.

Generally, this two-step analysis is fact-dependent. Thus, whether a plaintiff was on inquiry notice of a claim is usually a question reserved for the factfinder and not appropriate for summary judgment:

> Under [the discovery rule], the statute of limitations begins to run when a plaintiff has knowledge of circumstances which would cause a reasonable person in the position of the plaintiff to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged cause of action.

> Like any other issue that is fact-dependent, if there is any genuine dispute of material fact as to when the plaintiffs possessed that degree of knowledge, the issue is one for the trier of fact to resolve; summary judgment is inappropriate.

Bank of N.Y. v. Sheff, 382 Md. 235, 244 (2004) (cleaned up); *see also O'Hara v. Kovens*, 305 Md. 280, 294–95 (1986) ("[W]hether or not the plaintiff's failure to discover his cause of action was due to failure on his part to use due diligence . . . is ordinarily a question of fact for the jury." (internal quotations omitted)); *Baysinger v. Schmid Prods. Co.*, 307 Md. 361, 367–68 ("Whether a reasonably prudent person should then have undertaken a further investigation is a matter about which reasonable minds could differ, and it was therefore inappropriate for resolution by summary judgment."); *Young v. Medlantic Lab'y P'ship*, 125 Md. App. 299, 310 (1999) ("[The Maryland Supreme Court] has held that the question of whether a plaintiff acted with due diligence in bringing his or her cause of action is a question best left to the jury and is not an appropriate basis for a summary judgment motion."). On the other hand, when there are no disputed issues of material fact, the question of when a plaintiff was on inquiry notice can be determined as a matter of law, and summary judgment may be appropriate. *Sheff*, 382 Md. at 244 ("If there is no . . . genuine dispute [of material fact], however, and the question of whether the plaintiffs were on inquiry notice more than three years before their suit was filed can be determined as a matter of law, summary judgment on that issue is, indeed, appropriate.").

For a claim to accrue under the discovery rule, a prospective plaintiff must have notice of the "nature and cause of his or her injury." *Frederick Rd. Ltd. P'ship v. Brown*

& Sturm, 360 Md. 76, 96 (2000). This court has stated that "an injury occurs 'when the negligent act [is] coupled with some harm [to create] a legally cognizable wrong.'" *Edmonds v. Cytology Servs. of Md., Inc.*, 111 Md. App 233, 257 (1996) (brackets in original) (quoting *Hill v. Fitzgerald*, 304 Md. 689, 696 (1985)). Thus, a prospective plaintiff must have notice not only of harm, but also of the wrongdoing that was the cause of that harm. *United Parcel Serv., Inc. v. People's Couns. for Balt. Cnty.*, 336 Md. 569, 579 (1994) ("A cause of action accrues . . . when the plaintiff knows or should know of the injury, its probable cause, and the defendant's wrongdoing" (cleaned up)); *see also Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 448–49 (2000) (holding that peeling and scaling of concrete driveways was sufficiently apparent evidence of wrongdoing to establish inquiry notice, and thus accrual under discovery rule, because petitioners "knew immediately upon seeing the damage done to their driveways that a defect existed for which someone was responsible").

Consequently, symptoms, without more, generally do not suffice to establish inquiry notice of a medical malpractice claim as a matter of law. A patient must also have some reason to suspect that their symptoms resulted from a provider's negligent treatment. *Young*, 125 Md. App. at 306 ("A medical malpractice cause of action arises when harm results from the tortious act, but it *accrues*, and the statute of limitations begins to run, when the patient is aware, or in the exercise of due care and diligence should be aware, that the cause of action has *arisen*, that the medical care provider has breached a duty owing to the patient and that harm to the patient has resulted from that breach" (emphasis in original)); *Baysinger*, 307 Md. at 367 (holding that inquiry notice

could not be found as a matter of law where "there [was] no evidence that [the patient] . . . suspected, or reasonably should have suspected, wrongdoing on the part of anyone"); *cf. Lumsden*, 358 Md. at 449 (distinguishing *Baysinger*, in which the "hidden cause" of plaintiff's injury "created a factual question of whether a reasonably prudent person . . . would have conducted an immediate, thorough investigation[,]" from case at bar, in which plaintiffs were on inquiry notice as a matter of law because it was immediately apparent that someone must have negligently surfaced plaintiffs' damaged driveways).

On the other hand, when a patient experiences symptoms *and* an expert provides information to the patient suggesting that past related treatment may have been negligent, the patient may be found to be on inquiry notice as a matter of law. *Lutheran Hosp. of Md. v. Levy*, 60 Md. App. 227 (1984); *Russo v. Ascher*, 76 Md. App. 465 (1988). In *Lutheran Hospital*, a patient recovering from a broken ankle was told to stop using crutches and weight bear normally. *Id.* at 233. The patient continued to experience ankle pain, and at a follow-up some months later, an orthopedist told the patient that her ankle was "all messed up" and asked her "who the hell told you to walk on that ankle?" *Id.* This court held as a matter of law that the patient's continuing ankle pain, coupled with the orthopedist's statement and sharply worded question, put the patient on inquiry notice of malpractice claims for negligent treatment of her ankle. *Id.* at 236–37.

However, in *Lutheran Hospital*, we also explained that a provider need not know or state conclusively that malpractice has occurred for a patient to be put on inquiry notice of a claim:

A cause of action accrues when there are facts known or with reasonable

> diligence discoverable which would serve as the basis of an actionable claim and not necessarily when the patient is informed by counsel that he has a cause of action. The same is true of opinions by medical experts. The crucial date is the date the claimant is put upon inquiry, not the date an expert concludes there has been malpractice.

Id. at 240 (cleaned up). We further illustrated that principle in *Russo*. 76 Md. App. In that case, we held that a patient was on inquiry notice that her psychiatrist may have negligently failed to diagnose a brain cyst that was causing debilitating symptoms when a consulting physician advised the patient that she should undergo a CT scan of her brain. *Id.* at 471. Unlike the orthopedist in *Lutheran Hospital*, whose comments directly implied that past treatment of the patient's ankle was negligent, there was no indication that the consulting physician in *Russo* expressed any opinion about whether the psychiatrist's past treatment of the patient had been negligent. Nonetheless, the implication of the consulting physician's advice to the patient was that her condition might have a physiological cause that her psychiatrist had not considered. The court considered it beyond dispute that that implication was enough to cause a reasonable person to investigate further, and it thus held as a matter of law that the consulting physician's advice put the patient on inquiry notice. *Id.*

II. The Parties' Contentions

A. Appellees' Contentions[17]

[17] We are not persuaded by Appellees' contention that Mr. Hitt's timely filing of his first claim somehow means that his second claim should be time-barred. Nor are we persuaded by Appellees' assertions about when Mr. Hitt's claims arose. Appellees emphasize that Mr. Hitt claims he suffered injury from the malunions, and thus his claims arose, no later than March 2017. Even if true, we do not see why this is relevant. The

Appellees contend that Mr. Hitt's claims accrued more than three years before he filed his claim against them in November 2021—that is, before November 2018. Specifically, they argue that Mr. Hitt was on inquiry notice—in other words, that he was or should have been aware of facts or circumstances that would cause an ordinarily prudent person to conduct further investigation, and through that investigation, if conducted with reasonable diligence, Mr. Hitt would have discovered that Appellees' negligent treatment caused his metatarsal fractures to heal in malunion—no later than March 2018. They maintain that the circuit court correctly granted summary judgment in their favor because there is no genuine dispute of material fact concerning when Mr. Hitt was on inquiry notice.

As we interpret their arguments, Appellees have three alternative theories for how Mr. Hitt may have been placed on inquiry notice about his claims. Appellees' first theory is that Mr. Hitt's awareness of his own symptoms provided sufficient knowledge for him to be on inquiry notice. At a 2021 deposition Mr. Hitt testified that, when he was unable to bear weight on his right foot during a follow-up appointment with Dr. Tinubu in May 2017, it "stuck in [his] mind that something possibly could be wrong." Appellees interpret Mr. Hitt's statement as an admission that he suspected negligent treatment of his metatarsal fractures in May 2017. This purported admission, according to Appellees,

parties agree that the applicable limitations statute here is subsection (2) of CJP § 5-109(a), not subsection (1). Thus, the relevant question is not when Mr. Hitt's claims *arose* because he suffered injury, but instead when his claims *accrued* because he discovered the injury. *Young*, 125 Md. App. at 305–06.

proves that Mr. Hitt had knowledge of his injury sufficient to put him on inquiry notice about his claims in May 2017.

Appellees' second theory is that Mr. Hitt was or should have been aware of facts in his medical records that would have put him on inquiry notice before March 2018. In support of this theory, Appellees assert first that Mr. Hitt's providers found "abnormalities" in imaging studies of Mr. Hitt's right foot, including angulation of his fractured metatarsals and a bunion deformity. Appellees also point out that the UMOA providers used the terms "toe deformity[,]" "foot deformity[,]" and "bony abnormalities" in imaging reports and treatment notes from February and March 2018. Appellees interpret these terms as references to Mr. Hitt's malunions. They conclude that that information sufficed to put Mr. Hitt on inquiry notice.

Appellees' third theory is that Mr. Hitt's providers put him on inquiry notice by expressly telling him that his metatarsal fractures were causing his right foot symptoms. Appellees infer from Mr. Hitt's medical records that his providers knew about the malunions, and that they communicated information about the malunions to Mr. Hitt that was sufficient to put him on inquiry notice.

Finally, Appellees attempt to distinguish cases upon which Mr. Hitt relies. First, according to Appellees, Mr. Hitt reads *Russo* as holding that for a patient to be put on inquiry notice, there must be a "coupling of the symptoms and a doctor's advice regarding the cause of the condition." Appellees assert first that Mr. Hitt did receive such advice from Dr. O'Toole in February and March 2018. Alternatively, Appellees assert that Mr. Hitt's case is factually distinguishable from *Russo* and thus does not fall under

its holding. Second, Appellees propose a narrow reading of *Baysinger* that limits its holding to circumstances involving "further investigation"—that is, when a prospective plaintiff has already conducted an unsuccessful preliminary investigation into the cause of her injury. *Baysinger*, 307 Md. at 367. Appellees assert that, unlike the plaintiff in *Baysinger*, Mr. Hitt did not perform an initial investigation of his symptoms, and thus Mr. Hitt's case does not fall under the holding in *Baysinger*. Finally, Appellees assert that *Young* is inapplicable because unlike the plaintiff's medical records in that case, Mr. Hitt's medical records contained sufficient information for him to discover his claims on his own review. 125 Md. App. at 309.

B. Mr. Hitt's Contentions

Mr. Hitt contends that summary judgment was not appropriate because there is genuine dispute about when he was on inquiry notice about his claims against Appellees. Mr. Hitt argues that Appellees' arguments fail at both steps of the inquiry notice analysis. First, he argues that the record does not establish as a matter of law that he had or should have had knowledge of facts before November 2018 that would have caused a reasonable person to investigate further. He maintains specifically that he did not have such knowledge until the January 2019 CT scan revealed "healed fracture deformit[ies.]" Second, he asserts that a reasonable jury could conclude that he diligently investigated any possible malpractice claims against Appellees by pursuing follow-up treatment for his injuries, but nonetheless did not discover any negligence. He emphasizes that whether a prospective plaintiff was on inquiry notice is generally a fact-dependent determination that is not appropriate for summary judgment.

Following *Baysinger*, Mr. Hitt argues that the ongoing symptoms in his right foot, including pain and difficulty bearing weight, were by themselves not enough to put him on inquiry notice as a matter of law; he also needed to have had some reason to suspect that his symptoms were caused by wrongdoing. He argues that there is genuine dispute about whether he had any reason to suspect wrongdoing before November 2018.

To support this position Mr. Hitt distinguishes *Lutheran Hospital* and *Russo*. In those cases, providers communicated information to their patients that implied past negligent treatment clearly enough that a person of ordinary prudence would have begun to investigate further. According to Mr. Hitt, then, *Lutheran Hospital* and *Russo* stand for the principle that symptoms alone generally do not suffice to put a patient on inquiry notice. Instead, "the coupling of . . . symptoms and a doctor's advice regarding the cause of the condition" may be necessary to establish inquiry notice of a malpractice claim.

Here, in contrast, Mr. Hitt asserts that there is no evidence that his providers were aware of any malunions or other complications until January 2019. He maintains that while his foot was imaged four times between April 2017 and March 2018, imaging reports and treatment notes show that his providers did not diagnose any malunions; to the contrary, they concluded that his metatarsal fractures had healed properly. Mr. Hitt acknowledges that his providers were aware of his ongoing symptoms in his right foot and that they speculated about what condition might be causing them. He asserts, though, that there is no evidence that his providers believed that his symptoms were in any way caused by his metatarsal fractures. Moreover, even assuming that his providers did know about the malunions, Mr. Hitt asserts that there is no evidence that they made any

statements to him comparable to those in *Lutheran Hospital* and *Russo*—that is, statements that could reasonably be seen as implying that negligent treatment caused his malunions. Mr. Hitt thus concludes that there is, at the very least, genuine dispute about whether he had knowledge before January 2019 that would have caused an ordinarily diligent person to investigate further.

More specifically, Mr. Hitt acknowledges that the UMOA providers referred to a "toe deformity[,]" "foot deformity[,]" and "bony abnormalities" in their treatment notes and imaging reports from February and March 2018. But he disputes Appellees' contention that those terms were references to his metatarsal fractures. He points out that the UMOA providers made no express mention of malunions or healed fracture deformities and did not otherwise note any suspicion that his metatarsal fractures had healed improperly. When they did refer to the metatarsal fractures, they characterized them as "old [and] healed." Thus, Mr. Hitt concludes there is no information in the records tending to show that the metatarsal fractures were associated with any "deformity" or "abnormality" or responsible for any of his symptoms. Mr. Hitt suggests that the UMOA providers' uses of "deformity" and "abnormality" are instead references to other conditions, including the bunion deformity and metatarsophalangeal arthritis, both of which the UMOA providers expressly diagnosed and discussed in their treatment notes and imaging reports.

Finally, Mr. Hitt contends that even if Appellees' summary judgment motion clears the first hurdle of the two-step inquiry notice analysis, it falls short at the second because there is genuine dispute about whether a diligent investigation would have

discovered Appellees' alleged negligence. Mr. Hitt asserts that a reasonable jury could infer that he diligently investigated his claims against Appellees by pursuing follow-up treatment in 2017–2018 while his right foot was symptomatic,[18] and that despite that investigation, his providers did not diagnose the malunions until January 2019.

III. Analysis

We discuss each of Appellees' three theories for how Mr. Hitt was placed on inquiry notice in 2017–2018 and the underlying facts that they rely on to support them. We are mindful throughout that summary judgment is not appropriate when there is genuine dispute of material fact. *Blackstone*, 442 Md. at 694. There is a genuine dispute of material fact if there is admissible evidence upon which a reasonable jury could find for the non-moving party. *Windesheim*, 443 Md. at 326. Moreover, "[t]he notion of a 'dispute' is not limited to a testimony dispute about the very physical existence of a predicate fact in order to launch a possible inference. It may also be a 'dispute' about the inferential process itself." *Cador v. Yes Organic Mkt. Hyattsville Inc.*, 253 Md. App. 628, 635 (2022). Thus, summary judgment is not appropriate where material facts are susceptible to reasonable inferences that favor the non-moving party.

[18] Mr. Hitt appears to concede that he did not diligently investigate his claims for much of 2018, but he maintains that a reasonable jury could infer from the record that he failed to diligently investigate because the condition of his right foot improved for much of that year until his symptoms worsened in January 2019. Mr. Hitt adds that for much of 2018, his follow-up visits at UMOA and with his primary care providers focused on his knee, not his foot, because of the knee manipulation performed by Dr. O'Toole in April 2018.

We conclude that all three of Appellees' theories fail. Mr. Hitt has introduced evidence that places material facts in genuine dispute. Appellees' first theory fails because, pursuant to Maryland case law, Mr. Hitt's symptoms alone were not sufficient to establish as a matter of law that he was on inquiry notice. Appellees' second theory fails because there is genuine dispute about whether information in Mr. Hitt's medical records should have put him on inquiry notice. Finally, Appellees' third theory fails because there is genuine dispute about whether Mr. Hitt's providers had any knowledge of his malunions and because Appellees do not establish beyond dispute that the providers communicated any information to him that would have put him on inquiry notice. We are also not persuaded by Appellees' attempts to distinguish *Baysinger*, *Russo*, and *Young*.

Ultimately, Appellees contend that Mr. Hitt was on inquiry notice more than three years before he filed his complaint. But the evidence produced by Mr. Hitt establishes genuine dispute about that contention. Thus, the limitations issue was not appropriate for summary judgment and should have been submitted to the factfinder.

A. Mr. Hitt's awareness of his own symptoms, without more, does not establish that he was on inquiry notice as a matter of law

Appellees' first theory is that Mr. Hitt's awareness of his symptoms provided sufficient knowledge of his injuries for him to be on inquiry notice in May 2017. But as discussed above, inquiry notice requires not just knowledge of harm, but also knowledge that causally connects that harm to some wrongdoing. Our cases have established that symptoms, without more, are generally not enough to put a patient on inquiry notice of a medical malpractice claim as a matter of law because symptoms alone usually do not

establish sufficient knowledge of causation or wrongdoing. *See, e.g., Young*, 125 Md. App. at 312 (holding that patient's awareness of symptoms was not sufficient to establish inquiry notice as a matter of law). The evidence shows that in May of 2017 Mr. Hitt knew that his right foot hurt, occasionally became discolored, and could not easily bear weight. But that knowledge alone was not sufficient to alert Mr. Hitt to the possibility that Appellees may have negligently treated his metatarsal fractures. Considering the severity and extent of his other injuries and the fact that Dr. Tinubu did not express concern, Mr. Hitt could reasonably have assumed that his right foot symptoms were the natural result of his other injuries, or even that they were simply part of a slow, but ultimately uncomplicated healing process. Appellees do not point to any other knowledge that Mr. Hitt had at the time that would have linked his symptoms to any wrongdoing. Thus, we do not see why, without more, Mr. Hitt's right foot symptoms would have put him on notice of anyone's negligence.

Nor do we find Mr. Hitt's deposition statement to be persuasive evidence that he suspected in May 2017 that his right foot symptoms were caused by wrongdoing. Mr. Hitt asserting that "something . . . could be wrong" with his foot does not necessarily imply that he had any suspicions about causation. The statement could reasonably be interpreted merely as an expression of concern about his foot's unexpected failure to bear weight. Mr. Hitt also made the remark at deposition in November 2021, more than four years after the events described and with the benefit of hindsight. Appellees' insistence that we read a past awareness of causation into Mr. Hitt's deposition statement is misplaced.

More to the point, in *Baysinger*, our Supreme Court concluded that, without more, a patient's unsupported suspicions about causation of her injuries, even if ultimately correct, are insufficient to establish inquiry notice. 307 Md. at 367. What is required, instead, is knowledge of facts and circumstances that would cause an ordinarily diligent person to inquire further. *Id.* Here, the evidence does not establish beyond dispute that Mr. Hitt had any such knowledge in May 2017. Thus, even if Mr. Hitt's statement proved that he had suspicions in May 2017 about negligent treatment of his metatarsal fractures, such suspicions were not sufficient for him to be deemed on inquiry notice as a matter of law.

B. There is genuine dispute about whether review of his own medical records would have given Mr. Hitt knowledge of facts sufficient to put him on inquiry notice

Appellees' second theory is that information in Mr. Hitt's medical records was sufficient to put him on inquiry notice before November 2018. This theory relies on three separate assertions. First, Appellees assert that Mr. Hitt knew or should have known about information in his medical records. Second, they assert that information in Mr. Hitt's medical records would have caused a person of ordinary prudence to investigate further. And third, they assert that that further investigation would have uncovered evidence of a causal connection between Mr. Hitt's symptoms and Appellees' alleged negligence. We find that each of Appellees' assertions rests on disputed material facts or inferences therefrom.

First, Appellees assert that Mr. Hitt knew or should have known about information in his medical records. But they do not produce any evidence showing that Mr. Hitt

obtained any such knowledge by reviewing his medical records before November 2018. Nor do they explain why, as a matter of law, he was obligated to do so.[19] And as we discuss further *infra*, Appellees fail to establish beyond dispute that Mr. Hitt's providers expressly communicated information to him from his medical records that would have put him on inquiry notice. Thus, we conclude that there is a genuine dispute of material fact about Appellees' assertion that Mr. Hitt knew or should have known about information in his medical records.

Second, Appellees assert that information in Mr. Hitt's medical records would have caused an ordinarily diligent person to investigate further. They focus primarily on two facts. First, Appellees allege that Mr. Hitt's providers identified various "deviations, abnormalities, or deformities" in imaging studies taken between April 2017 and March

[19] In a possible attempt to address this issue, Appellees cite to a federal District of Maryland case, *Hartnett v. Schering Corp.*, for the proposition that "in cases involving medical issues, a reasonably diligent investigation must, at a minimum, include obtaining and reviewing all available medical records." 806 F. Supp. 1231, 1235 (D. Md. 1992), *aff'd* 2 F.3d 90 (4th Cir. 1993). Appellees do not expressly develop the argument, but they seem to suggest that we must impute knowledge of the contents of Mr. Hitt's medical records to him. We cannot agree. Aside from the fact that *Hartnett* is not binding precedent for Maryland courts, the cited statement is inapposite. The issue here is whether Mr. Hitt was on inquiry notice—in other words, whether he knew or should have known of facts that would have caused a reasonable person to investigate further. But in the cited statement from *Hartnett*, the District Court had already determined that the plaintiff was on inquiry notice. *Id.* Thus, the District Court's statement offers guidance for determining whether a person who is already on inquiry notice has investigated her claim with sufficient diligence; it does *not* offer guidance for determining what facts a person knew or should have known before she was on inquiry notice in the first place. We note, moreover, that unlike *Hartnett*, Maryland cases have generally avoided crafting broad legal rules about what constitutes reasonable diligence, recognizing that that fact-dependent question is generally best left to the factfinder. *See, e.g.*, *O'Hara*, 305 Md. at 294–95 (holding that whether prospective plaintiff investigated with reasonable diligence is ordinarily a factual dispute for factfinder); *Young*, 125 Md. App. at 310 (same).

2018. Second, Appellees point out that the UMOA providers used the generic terms "toe deformity[,]" "foot deformity[,]" and "bony abnormalities" in reports and treatment notes associated with imaging studies performed in February and March 2018. Appellees maintain that the only reasonable inference is that knowledge of those facts would cause an ordinarily diligent person to investigate further. We are not persuaded.

The facts alleged by Appellees are susceptible to multiple inferences. Appellees identify just two "deviations, abnormalities, or deformities" that Mr. Hitt's providers expressly diagnosed from his imaging studies: a "moderate bunion deformity" and "mild lateral angulation[.]"[20] A reasonable jury could find that these conditions were either not related to Mr. Hitt's metatarsal fractures, as with the bunion deformity,[21] or were not

[20] Appellees' brief lists five "deviations, abnormalities, or deformities" that they claim Mr. Hitt's providers discovered from four imaging studies of Mr. Hitt's right foot taken between April 2017 and March 2018. Appellees mostly mischaracterize the results of those imaging studies. First, Appellees mistakenly claim that a provider identified "lateral deviation of the lesser toes" from an x-ray taken in April 2017. In fact, that language comes from treatment notes written by Dr. Tinubu following a physical examination of Mr. Hitt's foot in May 2017. In any event, we believe that Dr. Tinubu's reference to "lateral deviation" does not indicate that he believed there were complications associated with Mr. Hitt's metatarsal fractures, especially considering his deposition testimony to the contrary and that at the time he noted that the metatarsal fractures showed "progression of healing with callus and remodeling." Appellees' list also includes the ambiguous phrases "bony abnormalities" and "toe deformity[.]" Neither phrase is a specific diagnosis, nor does either phrase represent findings from imaging studies. The phrase "bony abnormalities" appears to be a shorthand for Mr. Hitt's idiopathic foot condition that CRNP Breazeale used in a treatment note about future care plans following a physical examination. Likewise, the phrase "toe deformity" is not a diagnosis or a finding from an imaging study, but a generic descriptive phrase taken from the indication for a CT scan performed in March 2018.

[21] We do not see how a reference to a bunion deformity—an independent condition affecting the big toe—necessarily evinces knowledge of fracture malunions

medically significant, as with the metatarsal angulation.[22] Likewise, the generic terms used by the UMOA providers could reasonably be interpreted as references to the bunion deformity instead of any metatarsal fracture complications. As we discuss further *infra*, there is no evidence that Mr. Hitt's providers expressly diagnosed any metatarsal fracture complications before January 2019. They did, however, expressly diagnose several other conditions, including the bunion deformity. A reasonable jury could infer that the UMOA providers used the generic terms "toe deformity[,]" "foot deformity[,]" and "bony

affecting his second and third toes. Still, at oral argument Appellees referred to Dr. DeBerardino's testimony speculating that Appellees' alleged negligence in treating the metatarsal fractures may have "linked causation" with the bunion deformity. But Appellees do not otherwise develop the theory that Mr. Hitt's bunion deformity and malunions may have been causally connected, and thus that knowledge about the cause of the bunion deformity could have put Mr. Hitt on inquiry notice about claims related to both the bunion deformity and the malunions. We therefore do not consider this argument. We note, however, that Mr. Hitt alleged at oral argument that Mr. Hitt's bunion deformity preexisted the motor vehicle accident, and that Dr. DeBerardino testified that it was "not factually known" when the bunion deformity developed because there were no x-rays from before the accident to compare. Thus, we think it probable that any theory premised on a causal connection between the malunions and the bunion deformity would also be subject to genuine dispute.

[22] Dr. Tinubu explained that "angulation" does not mean that a bone is pathologically out of alignment and healing in malunion. He also testified that he believed that Mr. Hitt's metatarsal fractures were healing without complications despite their angulation. Dr. DeBerardino's testimony was not entirely consistent with Dr. Tinubu's about whether angulation of Mr. Hitt's metatarsals should have been considered evidence of a malunion or other fracture complication. But that question, not to mention the credibility of Dr. DeBerardino and Dr. Tinubu as witnesses, are issues for the factfinder to resolve.

abnormalities" to refer to conditions that they had actually diagnosed (or whose existence they suspected), not ones about which they seem to have been entirely unaware.[23]

Third, Appellees assert that a reasonably diligent investigation by Mr. Hitt would have discovered a causal relationship between his right foot symptoms and Appellees' alleged negligence. We believe that a reasonable jury could find otherwise. In particular, the evidence indicates that at least five different providers[24] reviewed medical records related to Mr. Hitt's right foot between April 2017 and March 2018. All five failed to diagnose the metatarsal fracture malunions. Far from diagnosing malunions, all of Mr. Hitt's providers seem to have believed that his metatarsal fractures had healed without

[23] For example, we think a reasonable jury could find that the term "foot deformity" that appeared in a March 2018 treatment note was a reference to a condition affecting Mr. Hitt's big toe, like the bunion deformity. Following a physical examination, Dr. O'Toole noted: "Right lower extremity: 5/5 EHL, tibialis, and gastrocsoleus, but of course, he has limited EHL function due to this foot deformity." There is no obvious referent immediately preceding the phrase "this foot deformity." The only other reference to a foot condition in that treatment note is the diagnosis "right first MTP pain of the foot"—that is, pain in the metatarsophalangeal joint of the right big toe. Moreover, "EHL" refers to the extensor hallucis longus, a muscle that runs from the lower leg and inserts in the big toe but does not connect in any way to the lesser toes. Since the "foot deformity" that Dr. O'Toole was referring to impeded function of Mr. Hitt's EHL muscle, it seems plausible that it was a condition like the bunion deformity that affected his big toe and not the lesser toes.

[24] Dr. Tinubu reviewed Mr. Hitt's records and treated his right foot during his hospital and rehabilitation stays. Following Mr. Hitt's discharge home in August 2017, he had multiple follow-up visits related to his right knee and right foot with orthopedist Dr. Todd Jaeblon and with his primary care provider, Dr. Avani D. Shah. At least two different providers at UMOA, Dr. O'Toole and CRNP Breazeale, reviewed Mr. Hitt's medical records and examined his right foot. We note also that Mr. Hitt consulted the UMOA providers expressly for a second opinion about his right knee and foot conditions, but they did not reach substantially different conclusions than his previous providers.

complications. Further, the evidence supports the inference that Mr. Hitt's providers were diligently investigating other possible causes for his right foot symptoms, including the bunion deformity. A reasonable jury could infer that a reasonably diligent investigation by Mr. Hitt or an expert hired to review his medical records would not necessarily have produced different conclusions than those reached by Mr. Hitt's five providers.

C. There is genuine dispute about whether Mr. Hitt's providers had any knowledge of his malunions and whether they communicated that knowledge to Mr. Hitt before January 2019

Appellees' third theory, that Mr. Hitt's providers expressly communicated information to him that placed him on inquiry notice, is premised on the alleged fact that Mr. Hitt's providers had knowledge of his malunions in 2017–2018. We are not persuaded of that fact, and we believe a reasonable jury could infer that Mr. Hitt's providers had no knowledge of his malunions before January 2019.

We find it particularly significant that Mr. Hitt's providers seem to have made no express reference to metatarsal fracture malunions before January 2019. Mr. Hitt argues, and Appellees do not dispute, that the terms "malunion" and "healed fracture deformity" do not appear in Mr. Hitt's excerpted medical records in connection with his metatarsals[25]

[25] The term "malunion" appears once in the description of a procedure performed by Dr. Griffith on Mr. Hitt's right knee on February 4, 2017. Before that procedure, which focused on realigning and stabilizing Mr. Hitt's fractured femur, Dr. Griffith advised Mr. Hitt about "the risks of the procedure, particularly in this case, of continued infection, development of a malunion or a nonunion, bleeding and stiffness about the knee as well as the risks of general anesthesia." No one contends that this use of the term "malunion" in the context of Mr. Hitt's fractured femur put Mr. Hitt on inquiry notice about malunions of his metatarsal fractures.

before January 2019, nor do any related terms that would indisputably show that the providers had diagnosed his metatarsal fracture malunions or suspected any other complications. When Mr. Hitt's providers did refer to the metatarsal fractures, they consistently characterized them as "old [and] healed[.]"

With no indisputable evidence that Mr. Hitt's providers knew of his malunions in 2017–2018, Appellees suggest instead that we infer such knowledge from ambiguous language in Mr. Hitt's medical records. Here as well Appellees point to the UMOA providers' use of the terms "toe deformity[,]" "foot deformity[,]" and "bony abnormalities[.]" But we are bound to draw all reasonable inferences in favor of Mr. Hitt. One could reasonably infer that those terms were not references to Mr. Hitt's malunions or any other metatarsal fracture complications, but instead to one of the conditions like the bunion deformity that the UMOA providers actually diagnosed.

Even if Mr. Hitt's providers did have knowledge of his malunions, Appellees do not produce any evidence showing that the providers expressly communicated such knowledge to Mr. Hitt. In both *Lutheran Hospital* and *Russo*, direct evidence established the content of the relevant conversations between the providers and patients.[26] Here, by contrast, the evidence does not establish the content of any conversations that Mr. Hitt had with his providers. We are thus limited to speculation about the content of

[26] In *Lutheran Hospital*, the patient testified to the content of her conversations with the orthopedist. 60 Md. App. at 233. In *Russo*, the court stated "[f]rom the evidence presented" that the consulting physician "advised" the patient that she should undergo a CT scan. 76 Md. App. at 470–71.

conversations between Mr. Hitt and his providers guided only by the providers' terse encounter notes.

D. Appellees' readings of cases upon which Mr. Hitt relies are not persuasive

Appellees attempt to distinguish Mr. Hitt's case from *Baysinger*, *Russo*, and *Young*. We are not persuaded by their reasoning. Appellees' purported distinctions rely on conclusory restatement of facts that they did not establish. For example, Appellees assert that "[u]nlike the plaintiff in *Young*, Mr. Hitt's medical records and radiology reports alone contained information from his health care providers that Mr. Hitt had suffered the two metatarsal fractures, that the Appellees had elected not to surgically repair or immobilize them and that as a result he had suffered harm." But as we discussed *supra*, Appellees do not explain why, for purposes of inquiry notice analysis, Mr. Hitt should be imputed knowledge of the information in his medical records. Similarly, Appellees have not shown that information in Mr. Hitt's medical records establishes any causal connection between his right foot symptoms and Appellees' alleged negligence.[27]

More fundamentally, Appellees misread the fact-dependent holdings of *Baysinger*

[27] In their discussions of *Baysinger* and *Russo*, Appellees make similarly unsupported assertions that we find similarly unpersuasive. With respect to *Baysinger*, they assert: "[u]nlike in *Baysinger*, had Mr. Hitt conducted an investigation, this would have revealed sufficient information concerning the alleged injury, probable cause and the potential wrong doing by the Appellees." In their discussion of *Russo*, Appellees state that "the evidence clearly establishes beyond dispute that Mr. Hitt was aware of problems with his right foot as early as May 2017, and was further advised by Dr. O'Toole's office in February and March 2018 that he had abnormalities and/or deformities in that foot from the metatarsal fractures."

and *Russo*. In *Baysinger*, the court explained:

> While the sparse record of facts before the trial judge demonstrated that [the plaintiff's] suspicions concerning the cause of her infection included the intrauterine device, it also showed that she initiated a preliminary investigation by discussing her suspicions with [her first doctor], and [he] told her he had "no way of determining whether her infection was caused by the [IUD] or by some other unrelated occurrence or instrumentality." The record further discloses that at that time [her second doctor] had no idea of what caused her illness, and consequently further investigation by way of inquiry [of her second doctor] would have been fruitless. We further note that while the record indicates that [the plaintiff] entertained various suspicions concerning the cause of her illness, there is no evidence that she then suspected, or reasonably should have suspected, wrongdoing on the part of anyone. Whether a reasonably prudent person should then have undertaken a further investigation is a matter about which reasonable minds could differ, and it was therefore inappropriate for resolution by summary judgment.

Baysinger, 307 Md. at 367-68. Appellees read too much into the phrase "further investigation[.]" In the context of the opinion and of the facts of the case, that phrase does not limit the court's holding. Rather, it is a factual reference that supports one of the court's main findings: that despite the plaintiff's suspicions about the cause of her injury, her preliminary investigation did not place her on inquiry notice because that investigation could not have discovered evidence linking her injury to any wrongdoing.

Contrary to Appellees' assertions, *Russo* does not hold as a rule (and Mr. Hitt does not argue) that the combination of symptoms and a doctor's advice regarding causation or wrongdoing is a *necessary* condition for a patient to be on inquiry notice of a malpractice claim. 76 Md. at 471. *Russo* establishes only that such a combination can be sufficient to

put a patient on inquiry notice.[28] *Id.*

CONCLUSION

For the reasons stated above, we find that genuine dispute exists as to when Mr. Hitt was on inquiry notice about his claims against Appellees. Based on the evidence before us we cannot find as a matter of law that Mr. Hitt's claims accrued more than three years before he filed his complaint in November 2021. Therefore, the circuit court's grant of summary judgment to Appellees on the basis of limitations was improper and must be reversed.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED; COSTS TO BE PAID BY APPELLEES.

[28] Additionally, we fail to see how the factual distinction that Appellees attempt to draw brings Mr. Hitt's case outside of the purported holding of *Russo*. Appellees assert that in *Russo*, the CT scan technology required to diagnose a patient's brain cyst was not available when the patient began treatment with her psychiatrist, 76 Md. App. at 468, while in contrast Mr. Hitt "did not have to wait until the development of a new medical test to learn of abnormalities in his foot." We do not see the significance of this distinction. Moreover, by the time the patient in *Russo* sought a second opinion from the consulting physician, the necessary CT scan technology had been available to her psychiatrist for about four years. *Id.* at 472. Thus, the patient in *Russo* had not been "wait[ing] until the development of a new medical test" for some time.