IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Crystal Walton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 18 L 9308
	)	
Ingalls Memorial Hospital,	)	
Manoj Sreedharan, M.D., and	)	
Joanna Westerfield, PAC,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Statutory interpretation is a question of law for the court. The statute for interpretation in this dispute, known as Gabby's Law, does not indicate when hospitals were to adopt and implement sepsis protocols, but authorizes the Illinois Department of Public Health (IDPH) to establish metrics and rules for that purpose. The statute can be read only to mean that hospitals did not have to adopt and implement sepsis protocols until after the IDPH had established implementing rules. The plaintiff's summary judgment must, therefore, be denied, and the defendant's summary judgment motion be granted in part and denied in part.

Facts

On August 18, 2016, the Illinois Legislature enacted and made effective an amendment to the Hospital Licensing Act, known as Gabby's Law. The amendment provides, in part, that:

> (a) Each hospital shall adopt, implement, and periodically update evidence-based protocols for the early

recognition and treatment of patients with sepsis, severe sepsis, or septic shock (sepsis protocols) that are based on generally accepted standards of care. . . .

(b) Each hospital shall ensure that professional staff . . . are periodically trained to implement the sepsis protocols required under subsection (a). The hospital shall ensure updated training of staff if the hospital initiates substantive changes to the sepsis protocols.

(c) Each hospital shall be responsible for the collection and utilization of quality measures related to the recognition and treatment of severe sepsis for purposes of internal quality improvement.

(d) The evidence-based protocols adopted under this Section shall be provided to the Department upon the Department's request.

(f) Subject to appropriation, the Department shall:

(1) recommend evidence-based sepsis definitions and metrics that incorporate evidence-based findings, including appropriate antibiotic stewardship, and that align with the National Quality Forum, the Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, and the Joint Commission;

(2) establish and use a methodology for collecting, analyzing, and disclosing the information collected under this Section, including collection methods, formatting, and methods and means for aggregate data release and dissemination;

(3) complete a digest of efforts and recommendations no later than 12 months after the effective date of this amendatory Act of the 99th General Assembly; the digest may include Illinois-specific data, trends, conditions, or other clinical factors; a summary shall be provided to the Governor and General Assembly and shall be publicly available on the Department's website; and

(4) consult and seek input and feedback prior to the proposal, publication, or issuance of any guidance, methodologies, metrics, rulemaking, or any other

> information authorized under this Section from statewide organizations representing hospitals, physicians, advanced practice registered nurses, pharmacists, and long-term care facilities. Public and private hospitals, epidemiologists, infection prevention professionals, health care informatics and health care data professionals, and academic researchers may be consulted.
>
> If the Department receives an appropriation and carries out the requirements of paragraphs (1), (2), (3), and (4), then the Department may adopt rules concerning the collection of data from hospitals regarding sepsis and requiring that each hospital shall be responsible for reporting to the Department.

210 ILCS 85/6.23a(a) – (d) & (f).

On November 14, 2017, Crystal Walton went to Ingalls Memorial Hospital's satellite emergency department located in Calumet City. Ingalls did not have protocols for the evaluation of sepsis, and doctors there did not admit her. Crystal later suffered a necrotizing infection requiring extensive medical care and surgical intervention. On May 24, 2018, the IDPH adopted rules to implement Gabby's law.

Count two of Walton's second amended complaint is a cause of action for institutional negligence against Ingalls. Paragraph 13 of count two claims that Ingalls was negligent by failing to: (a) adopt evidence-based sepsis protocols; (b) implement such protocols; (c) have protocols in place for the identification and care of sepsis patients; (d) train personnel on sepsis protocols; and (e) comply with Gabby's Law. Walton seeks summary judgment on count two based on Ingalls' failure to have sepsis protocols in place as of November 14, 2017, her date of alleged injury. Ingalls, in turn, seeks summary judgment on count two because Gabby's Law cannot be read to require hospitals to have sepsis protocols until after the IDPH established metrics and rules to implement the statute.

Analysis

Each party has each filed a summary judgment motion as to the institutional negligence cause of action that is count two. The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Ed. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

The parties agree the statutory construction of Gabby's Law determines this dispute, but their arguments lead to vastly different results. The cardinal rule of statutory construction is to "ascertain and effectuate the legislature's intent. . . ." *McElwain v. Illinois Sec'y of State*, 2015 IL 117170, ¶ 12. The primary source from which to infer this intent is the statute's language. *See id.* "If the language of the statute is clear, the court should give effect to it and not look to extrinsic aids for construction." *Bogseth v. Emanuel*, 166 Ill. 2d 507, 513 (1995). *See O'Casek v. Children's Home & Aid Soc'y*, 229 Ill. 2d 421, 446 (2008) (if statute is unambiguous, resort to legislative history is inappropriate). It is also plain that a court may not, "depart from plain statutory language by reading into [a] statute exceptions, limitations, or conditions not expressed by the legislature." *McElwain*, 2015 IL 117170, ¶ 12. This includes limitations, exceptions, and conditions that the legislature removed. *In re Hasabnis*, 322 Ill. App. 3d 582, 596 (1st Dist. 2001). If the statutory language is clear and unambiguous, it is to be given effect without resorting to other aids of construction. *See Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13. Further, a statute is to be viewed as a whole, construing words and phrases in light of other relevant statutory

provisions. *See Chicago Teachers Union v. Board of Ed.*, 2012 IL 112566, ¶ 15 (citing cases).

Walton's argument that Ingalls was negligent for not having adopted and implemented sepsis protocols by November 14, 2017 is problematic for several reasons. First, Walton's argument seeks to bypass statutory construction to reach the ultimate conclusion that Ingalls is negligent for violating Gabby's Law. Yet violations of statutes designed to protect human life are merely *prima facie* evidence of negligence; "the violation does not constitute negligence *per se*." *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 394 (1999) (citing *Kalata v. Anheuser-Busch Cos.*, 144 Ill. 2d 425, 434-35, (1991)). In other words, negligence based on a statutory violation is a rebuttable presumption. *See Barthel v. Illinois Central Gulf R.R.*, 74 Ill. 2d 213, 219 (1978). *Prima facie* negligence may not, therefore, be presumed if the statute is subject to construction.

Second, there is nothing in the statute indicating when hospitals had to adopt and implement sepsis protocols. Not even Walton argues that Ingalls had to have sepsis protocols in place as of the statute's August 18, 2016 effective date; rather, she argues they should have been in place by November 14, 2017. That date is obviously not based on the statute, but on Walton's date of alleged injury. Quite simply, her date of injury does not drive the statute's interpretation.

Third, the statute's plain language reads temporally to future events: "[e]ach hospital *shall* adopt, implement, and periodically update evidence-based protocols," "[e]ach hospital *shall* ensure that professional staff . . . are periodically trained;" and "[e]ach hospital *shall* be responsible for the collection and utilization of quality measures related to the recognition and treatment of severe sepsis for purposes of internal quality improvement." 210 ILCS 85/6.23a(a) – (c). Those provisions cannot be read to have required hospitals to adopt and implement sepsis protocols on August 18, 2016 or any other date. It is, therefore, necessary to look elsewhere in

the statute for the answer as to when hospitals had to adopt and implement sepsis protocols.

The answer is found in the section of Gabby's Law relating to the IDPH. The legislature implicitly recognized that the IDPH could not have metrics and rules in place as of the statute's August 18, 2016 effective date and that the IDPH needed an appropriation and time to develop the sepsis reporting requirements for hospitals. Once again, the statute leaves that date undefined. Yet it is only reasonable to conclude that since the legislature knew the IDPH could not implement rules as of the statue's effective date, neither could it expect hospitals to adopt and implement sepsis protocols imposed by Gabby's law by August 18, 2016.

Subparagraph (d) strongly suggests the legislature purposefully linked hospital sepsis protocols to the IDPH rules based on the following language: "The evidence-based protocols adopted under this Section shall be provided to the Department upon the Department's request." In other words, the IDPH did not want inconsistent data points submitted by hospitals whenever they saw fit. Rather, the legislature intended the IDPH to develop protocols that would provide useful information for the diagnosis and treatment of sepsis applicable to all hospitals statewide. That conclusion is further supported given the legislative framework provided to the IDPH in subparagraph (f).

In sum, Gabby's Law did not require hospitals to adopt and implement sepsis protocols until the IDPH established the type of information it wanted. Given that the statutory language is unambiguous, it is unnecessary to resort to outside sources, such as Ingalls' reliance on *Daley v. Teruel*, 2018 IL App (1st) 170891. This court's conclusion does not mean, however, that count two is subject to summary judgment in its entirety. Rather, only count two, paragraph 13(e), refers to Ingalls' violation of Gabby's Law, subparagraphs (a)-(d) do not. Hence, it could be that Ingalls was negligent for not having

sepsis protocols in place as of November 14, 2017, wholly apart from any requirement imposed by Gabby's Law. That is, however, a question of fact for a jury to decide.

Conclusion

For the reasons presented above, it is ordered that:

1. Walton's summary judgment motion as to count two is denied; and
2. Ingalls' summary judgment motion as to count two is granted as to paragraph 13(e), but denied as to paragraph 13(a)-(d).

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075