

No. 18-7027

IN THE
SUPREME COURT OF THE UNITED STATES

CRYSTAL NICOLE KURI a/k/a CRYSTAL NICOLE JONES,
Petitioner,

v.

ADDICTIVE BEHAVIORAL CHANGE HEALTH GROUP, LLC,
MATRIX CENTER, STEVE KAMAU, KELSEY STEPP,
and CHAD JACOBS,
Respondents.

On Petition for Writ of Certiorari to the
Kansas Supreme Court

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There are no questions presented in the Petition appropriate for review by the U.S. Supreme Court. See the Argument section of this brief for an explanation.

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LIST OF PARTIES

Not all the parties appear in Petitioner's case caption. In addition to the Respondent listed in Petitioner's case caption (Addictive Behavioral Change Health Group, LLC ("ABC")), there are three individuals who Petitioner sued in this case: Steve Kamau, Kelsey Stepp, and Chad Jacobs. Petitioner had also named The Matrix Center as a Defendant, but The Matrix Center is merely a trade name under which ABC operates its drug addiction treatment clinic. Addictive Behavioral Change Health Group, LLC does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

OPINIONS BELOW

Kuri v. Addictive Behavioral Change Health Group, et al., Case No. 17-CV-0126, Journal Entry of Summary Judgment, April 14, 2017 (District Court, Sedgwick County, Kansas) (attached to Kuri's Petition as Appendix D).

Kuri v. Addictive Behavioral Change Health Group, et al., No. 117,589, 2017 WL 6396326 (Kan. App. 2d Dec. 15, 2017) (unpublished disposition). [Note: this is the highest state court to review the merits. The copy of that Memorandum Opinion presented by Petitioner as her Appendix C contains only the odd-numbered pages of the opinion. So attached hereto as Appendix C is a complete copy of that Memorandum Opinion.]

Kuri v. Addictive Behavioral Change Health Group, et al., No. 117,589, (Kan. Oct. 30, 2018) (unpublished denial of review, Petitioner’s Appendix A).

JURISDICTION

The date on which the Kansas Court of Appeals decided this case was December 15, 2017. A timely Petition for Review was filed with the Kansas Supreme Court, which was denied on October 30, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The primary constitutional provision identified by Petitioner is the Due Process Clause of the 14th Amendment to the U.S. Constitution: “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

Petitioner also identified the Due Process Clause of the 5th Amendment: “nor shall any person ... be deprived of life, liberty, or property, without due process of law.”

Petitioner also identified the Equal Protection Clause of the 14th Amendment: “nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”

Petitioner also identified a Kansas statute of limitation and statute of repose, K.S.A. 60-513. It provides, in relevant part, as follows:

- (a) The following actions shall be brought within two years:
 - (1) An action for trespass upon real property.
 - (2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.

- (3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.
 - (4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.
 - (5) An action for wrongful death.
 - (6) An action to recover for an ionizing radiation injury as provided in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.
 - (7) An action arising out of the rendering of or failure to render professional services by a health care provider, not arising on contract.
- (b) Except as provided in subsections (c) and (d), the causes of action listed in subsection (a) shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured party, but in no event shall an action be commenced more than 10 years beyond the time of the act giving rise to the cause of action.

Petitioner failed to identify by citation the Kansas statute of limitation that applies to her case, K.S.A. 60-514. It provides in relevant part as follows:

The following actions shall be brought within one year:

- (a) An action for libel or slander.
- (b) An action for assault, battery, malicious prosecution, or false imprisonment.

Petitioner also refers to the principle of “standing” under Article III of the U.S. Constitution. But Respondents have not challenged Petitioner’s standing to bring her state court case.

In her Statement of the Case, Petitioner also claims that Respondents violated the “Civil Rights Act.” But she does not identify any particular civil rights act, and does not identify what civil rights she asserts were violated by the

Respondents. Her state court pleadings included no reference to a “Civil Rights Act.”

The Kansas statute providing for summary judgment motions is K.S.A. 60-256. Its full text is in Appendix A.

The Kansas Supreme Court rule providing additional procedures for summary judgment motions is Kansas Supreme Court Rule 141. Its full text is in Appendix B.

STATEMENT OF THE CASE

Petitioner (“Kuri”) was briefly employed by ABC in its drug addiction treatment clinic, The Matrix Center, as a nurse whose job was to dispense the daily prescription medication (usually methadone) to the patients. ABC has a “zero tolerance” policy for drug abuse by its employees. Kuri was working very slowly one day, and the clinic director suspected she was intoxicated. He ordered a saliva sample drug screen of all the employees. The results showed that Kuri had methadone in her saliva. Because she did not have a prescription for methadone, her employment with ABC was terminated. Kuri initially accused the clinic director of switching or tampering with her saliva sample so it would test positive for methadone, and then she asserted that one or two of her co-employees did not like her and must have surreptitiously put methadone in her drink four days earlier when the clinic bought lunch for its employees. The clinic director found these

assertions to lack credibility (for example, she had worked two other days after the asserted poisoning with no slow-down of her work speed).

Because methadone is a controlled substance, ABC is required to keep a precise pill count and to document any anomalies. So incident reports were written by the clinic director and a co-employee and provided to the U.S. Drug Enforcement Administration. An investigator from the DEA interviewed the clinic director about the incident. Kuri called the local police department and accused her co-workers of poisoning her. A police investigator then interviewed the clinic director and some co-employees about the incident. Neither the DEA nor the police took any further action. However, the Kansas State Board of Nursing (“KSNB”) started a proceeding and conducted its own investigation. It subpoenaed the incident reports from ABC and subpoenaed the clinic director to testify at its hearing. The KSNB eventually revoked Kuri’s Kansas nursing license as the result of its proceeding.

Kuri filed suit in federal district court against ABC, the two co-workers, and the clinic director, claiming that she had been poisoned, libeled and slandered. The federal district court dismissed the case for lack of federal subject matter jurisdiction. Kuri appealed the dismissal to the 10th Circuit, which affirmed the dismissal. After a long delay Kuri filed suit in the Kansas state court against the same parties making essentially the same allegations. On motion of the Defendants in that case, the court ordered Kuri to give a more definite statement of the claim she referred to as “retaliation” in her pleading. The court later determined that her “retaliation” claim was merely a restatement of her claims for battery (poisoning)

and defamation (libel and slander). The Defendants filed a motion for summary judgment against Kuri's claims because the Kansas one-year statute of limitations for battery and defamation claims (K.S.A. 60-514) had expired, and also as the Kansas "savings statute" (K.S.A. 60-518) did not apply to extend the limitation period for Kuri's claims because more than six months had passed since her federal court case had been dismissed, including affirming the dismissal on appeal. The motion for summary judgment received the normal statutory and court rule process, with Kuri filing a brief in opposition to the motion and personally appearing and being heard at the hearing on the motion. The district court granted the motion for summary judgment against Kuri's claims, ruling that her claims were for battery and defamation and that the uncontroverted facts established that Kansas' one-year statute of limitation for such claims had expired.

Kuri then appealed the summary judgment to the Kansas Court of Appeals, claiming in part that her due process rights had been violated because she had not been given an opportunity to proceed with discovery and a jury trial. The Kansas Court of Appeals affirmed the summary judgment. Kuri then petitioned the Kansas Supreme Court to review the case, which denied the petition.

These facts are from the uncontroverted facts and the conclusions of law determined by the Kansas district court in *Kuri v. Addictive Behavioral Change Health Group, et al.*, Case No. 17-CV-0126, Journal Entry of Summary Judgment, April 14, 2017 (attached to Kuri's Petition as Appendix D). The facts relating to the proceeding before the Kansas Court of Appeals are from the unpublished

Memorandum Opinion in *Kuri v. Addictive Behavioral Change Health Group, et al.*, No. 117,589, 2017 WL 6396326 (Kan. App. 2d Dec. 15, 2017) (attached hereto as Appendix C). The Kansas Supreme Court’s denial of the Petition for Review is found at *Kuri v. Addictive Behavioral Change Health Group, et al.*, No. 117,589, (Kan. Oct. 30, 2018) (Petitioner’s Appendix A).

ARGUMENT—REASONS FOR DENYING THE PETITION

1. The case presents no issue of federal law. Summary judgment was granted against Kuri’s claims (which were state law claims for battery and defamation) on the basis of the applicable Kansas statute of limitation. It is apparent from the five questions presented in Kuri’s Petition for a Writ of Certiorari that none are questions of federal law.

Questions 1 and 5 are whether Kansas’ one-year statute of limitation (K.S.A. 60-514) was properly applied to Kuri’s claims. This is a question of Kansas law.

Question 4 is whether the prior case asserting Kuri’s claims, which she filed in federal court and which was dismissed for lack of federal subject matter jurisdiction, made the filing of her later state court case timely. This question is determined by Kansas law regarding the timeliness of a claim brought in the Kansas courts, in particular K.S.A. 60-518 which is referred to as the Kansas “savings statute.”

Question 2 presents a question of fact.

Question 3 presents a question of Kansas law. The Kansas district court determined that Petitioner's "retaliation" claim was merely a restatement of her claims for battery and defamation. See the Journal Entry of Summary Judgment at 7, Appendix D to Kuri's Petition for a Writ of Certiorari. Kuri did not challenge that ruling on her appeal to the Kansas Court of Appeals, *Kuri*, slip op. at 5, attached hereto as Appendix C. So she is not now in a position to challenge that ruling in her Petition for a Writ of Certiorari.

An explanation regarding Kuri's statement of her Question 1 may be of assistance. In her Question 1, she asserts that she had presented 13 different claims in the state court and she assigns numbers to them. This Petition is the first time that she has claimed to have asserted 13 different claims in the state court. But it is apparent from a review of the 13 "claims" listed by Kuri that they are simply different ways of referring to her two legal claims and a few other concepts. Her asserted claims numbered 1, 3, 4, 8, 9, 10, and 11 are all references to aspects of her battery (poisoning) and defamation (libel and slander) claims. Her asserted claims numbered 2, 6, 7, 12, and 13 are references to her asserted injuries or that she is entitled to punitive damages. Her

asserted claim numbered 11 (“retaliation”) is a claim she stated in her original state court Petition, but which the court determined from her response to an order to give a more definite statement of the claim was merely a restatement of her battery and defamation claims. Her asserted claim numbered 5 (“wrongful termination”) was not asserted in the state court, but it would apparently be a state law claim.

2. The Due Process Clause of the 14th Amendment to the U.S.

Constitution does not apply to this case. That clause provides: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” This case does not involve a claim that the State of Kansas deprived Kuri of her property. While her Kansas nursing license could be considered a property interest, the State of Kansas revoked that license in a different proceeding. That did not occur as part of this case. In this case Kuri alleged she had been battered and defamed by private parties and sought an award of damages from them. The fact that a Kansas court granted summary judgment against her claims because the statute of limitation had expired does not mean that the state deprived her of property, let alone without due process. Rather, it just prevented her from further using the state courts in pursuit of futile claims.

3. Kuri received due process in this case. The motion for summary judgment received the normal procedure provided by Kansas statute (K.S.A. 60-256) and the applicable court rule (Kansas Supreme Court Rule 141). Kuri filed a brief in

opposition to the motion, and she personally appeared and was heard at the hearing on the motion. *Kuri*, No. 117,589, slip op. at 3 (Kan. App. 2d Dec. 15, 2017), attached as Appendix C. She therefore received appropriate notice and an opportunity to be heard, which are the hallmarks of due process. It is well-established that summary judgment, whether in federal courts or state courts, is an accepted part of civil procedure. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

4. The Due Process Clause of the 5th Amendment does not apply to this case. This case does not involve the federal government depriving Kuri of her property, let alone without due process.

5. The Equal Protection Clause of the 14th Amendment does not apply to this case. Kuri has not previously raised such an argument in this case, so there is no prior ruling on this point to review. And she provides no facts or argument showing that she was treated differently than others who asserted untimely battery and defamation claims.

6. Kansas' ten-year statute of repose in K.S.A. 60-513(b) does not apply to this case. Kuri asserted claims for battery and defamation, which are governed by a different statute, K.S.A. 60-514. And the Kansas statute of repose provides an additional limitation on when a claim may be brought, not an alternative limitation. *Doe v. Popravak*, 55 Kan. App. 2d 1, 8, 421 P.3d 760, 765–66 (2017).

7. Kuri incorrectly implies in her first question presented that she had raised a “wrongful termination” claim in this case. The Kansas district court determined that the claims Kuri raised were for battery and defamation only

(Journal Entry of Summary Judgment at 5-7, Kuri's Appendix D). She did not challenge that ruling on appeal to the Kansas Court of Appeals. *Kuri*, slip op. at 5, attached hereto as Appendix C. So Kuri is not now in a position to challenge that ruling in her Petition for a Writ of Certiorari.

8. No "Civil Rights Act" applies to this case. Kuri does not identify any particular civil rights act, and she does not identify any particular civil rights that she claims were violated other than her references to due process and equal protection as discussed above. Again, because Kuri did not challenge in the Kansas Court of Appeals the district court's ruling that her claims were for battery and defamation only, she is not now in a position to challenge that ruling in her Petition for a Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

West's Kansas Statutes Annotated
Chapter 60. Procedure, Civil
Article 2. Rules of Civil Procedure

K.S.A. 60-256

60-256. Summary judgment; filing fee

Currentness

(a) *By a claiming party.* A party claiming relief may move, with or without supporting affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto, for summary judgment on all or part of the claim.

(b) *By a defending party.* A party against whom relief is sought may move, with or without supporting affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto, for summary judgment on all or part of the claim.

(c) *Time for a motion; response and reply; proceedings.*

(1) These times apply unless a different time is set by local rule or the court orders otherwise:

(A) A party may move for summary judgment at any time until 30 days after the close of all discovery;

(B) a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and

(C) the movant may file a reply within 14 days after the response is served.

(2) The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) *Case not fully adjudicated on the motion.*

(1) *Establishing facts.* If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) *Establishing liability.* An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) *Affidavits or declarations; further testimony.*

(1) *In general.* A supporting or opposing affidavit or declaration must be made on personal knowledge, set out facts that would be admissible in evidence and show that the affiant or declarant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit or declaration, a sworn or certified copy must be attached to or served with the affidavit or declaration. The court may permit an affidavit or declaration to be supplemented or opposed by depositions, answers to interrogatories or additional affidavits or declarations.

(2) *Opposing party's obligation to respond.* When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must, by affidavits or by declarations pursuant to K.S.A. 53-601, and amendments thereto, or as otherwise provided in this section, set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) *When affidavits or declarations are unavailable.* If a party opposing the motion shows by affidavit or by declaration pursuant to K.S.A. 53-601, and amendments thereto, that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) Deny the motion;

(2) order a continuance to enable affidavits or declarations to be obtained, depositions to be taken or other discovery to be undertaken; or

(3) issue any other just order.

(g) *Affidavits or declarations submitted in bad faith.* If satisfied that an affidavit or declaration under this section is submitted in bad faith or solely for delay, the court must order the submitting party or attorney to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may be held in contempt.

Credits

Laws 1963, ch. 303, 60-256; Laws 1986, ch. 215, § 11; Laws 1987, ch. 218, § 5; Laws 1997, ch. 173, § 29; Laws 2007, ch. 190, § 18, eff. July 1, 2007; Laws 2010, ch. 135, § 129, eff. July 1, 2010; Laws 2014, ch. 82, § 34, eff. July 1, 2014; Laws 2015, ch. 81, § 22, eff. June 5, 2015.

Notes of Decisions (829)

K. S. A. 60-256, KS ST 60-256

Statutes are current through laws effective on or before July 1, 2018, enacted during the 2018 Regular Session of the Kansas Legislature.

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APPENDIX B

Rule 141

SUMMARY JUDGMENT

- (a) **Motion for Summary Judgment; Requirements.** A motion for summary judgment must be accompanied by a filing fee and a memorandum or brief that:
- (1) states concisely, in separately numbered paragraphs, the uncontroverted contentions of fact on which the movant relies;
 - (2) for each fact, contains precise references to pages, lines and/or paragraphs — or to a time frame if an electronic recording — of the portion of the record on which the movant relies; and
 - (3) is filed and served on all counsel of record and unrepresented parties not in default for failure to appear.
- (b) **Response to Motion for Summary Judgment; Requirements.** A memorandum or brief opposing a motion for summary judgment must:
- (1) state — in separately numbered paragraphs that correspond to the numbered paragraphs of movant's memorandum or brief — whether each of movant's factual contentions is:
 - (A) uncontroverted;
 - (B) uncontroverted for purposes of the motion only; or
 - (C) controverted, and if controverted:
 - (i) concisely summarize the conflicting testimony or evidence and any additional genuine issues of material fact that preclude summary judgment; and
 - (ii) provide precise references as required in subsection (a)(2); and
 - (2) be filed and served on all counsel of record and unrepresented parties not in default for failure to appear not later than 21 days after service of the motion, unless the time is extended by local rule or court order.
- (c) **Reply to Motion for Summary Judgment; Requirements.** Any reply must be filed and served on all counsel of record and unrepresented parties not in default for failure to appear not later than 14 days after service of the response, unless the time is extended by local rule or court order.
- (d) **Objection That a Fact is Not Supported by Admissible Evidence.** A party may object

that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

- (e) **Materials Not Cited.** The court need consider only the parts of the record that have been cited in the parties' briefs, but it may consider other materials in the record.
- (f) **Hearing or Final Submission for Decision.** A motion for summary judgment may be heard only when the movant has complied with subsection (a), and one of the following has occurred:
 - (1) the opposing party has complied with subsection (b) and the movant has filed a reply or the time for the movant to reply has expired; or
 - (2) the court orders that the motion is deemed finally submitted because the opposing party failed to comply timely with subsection (b), in which case the uncontroverted factual contentions stated in the moving party's memorandum or brief are deemed admitted for purposes of the motion.
- (g) **Findings and Conclusions by the Court.** When granting a motion for summary judgment, the court must state its findings of fact and conclusions of law in compliance with Rule 165. When denying a motion, the court must state the reasons for the denial.

[**History:** Am. effective September 23, 1980; Restyled rule and amended effective July 1, 2012; Am. (a) effective February 9, 2015.]

APPENDIX C

NOT DESIGNATED FOR PUBLICATION

No. 117,589

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CRYSTAL NICOLE KURI,
Appellant,

v.

ADDICTIVE BEHAVIORAL CHANGE HEALTH GROUP, et al.,
Appellees.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; TIMOTHY G. LAHEY, judge. Opinion filed December 15, 2017. Affirmed.

Crystal N. Kuri, a.k.a. Crystal N. Jones, appellant pro se.

Monte Vines, of Adams Jones Law Firm, P.A., of Wichita, for appellees.

Before ARNOLD-BURGER, C.J., LEBEN and POWELL, JJ.

POWELL, J.: Crystal Nicole Kuri appeals the district court's grant of summary judgment against her battery, libel, and slander claims due to the expiration of the one-year statute of limitations contained in K.S.A. 60-514. Kuri claims the district court erred by granting summary judgment because a 10-year statute of repose permits her claims. Kuri also claims the district court's grant of summary judgment denied her due process by prematurely ending discovery and denying her the right to present her case to a jury. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2015, the Matrix Center—a methadone clinic owned and operated by Addictive Behavioral Change Health Group, LLC—fired Kuri from her nursing position after she tested positive for methadone. Kuri's position involved dispensing methadone to patients. At the time of her termination, Kuri alleged to her supervisor, Steve Kamau, that someone must have paid him to switch the samples to make her sample test positive. Kuri also alleged to Kamau that a coworker must have put methadone in her drink four days earlier when the clinic provided staff with food and drink. Kuri subsequently filed a report with the Wichita Police Department that one or more of her coworkers poisoned her with methadone. On February 11, 2015, a police officer interviewed Kamau at the clinic regarding Kuri's police report.

The day after Kuri was fired, written incident reports were sent to the Drug Enforcement Agency (DEA) regarding Kuri's positive test results. Because methadone is a controlled substance, the clinic is required to report any anomalies involved in handling the medication. The incident reports also disclosed that Kuri had previously dispensed incorrect amounts of methadone tablets to patients. On February 25, 2015, a DEA agent interviewed Matrix Center staff regarding the reports. Several months later, in response to a subpoena, Kamau sent copies of the incident reports regarding Kuri to the Kansas State Board of Nursing.

On September 29, 2015, Kuri filed suit against the Matrix Center, Kamau, and two other coworkers in the United States District Court for the District of Kansas. Kuri alleged that her coworkers had poisoned her drink with methadone and had falsified written reports regarding the incident. On February 8, 2016, the federal court dismissed Kuri's claims for lack of subject matter jurisdiction; the Tenth Circuit Court of Appeals affirmed on May 18, 2016.

On January 18, 2017, Kuri filed her present lawsuit in Sedgwick County District Court, alleging that her coworkers poisoned her drink with 50 milligrams of methadone and made false written reports that resulted in her termination. In relevant part, Kuri requested damages for the deliberate and intentional harm and retaliation caused by her coworkers. Shortly after, the defendants filed a motion seeking a more definite statement from Kuri on her retaliation claim. Kuri responded that "retaliation" means "to do something in response to an action done to oneself or an associate, especially to attack or injure someone." She stated that her coworkers retaliated against her by poisoning her drink with methadone and filing the false incident reports because she would not let a coworker dose patients.

On March 7, 2017, the defendants filed a motion for summary judgment, arguing that the one-year statute of limitations contained in K.S.A. 60-514 barred Kuri's claims. Kuri timely responded. The defendants replied, arguing that because Kuri had failed to properly controvert any of the defendants' statements of uncontroverted facts, the district court was required to deem such facts as admitted.

On April 13, 2017, the district court held a hearing on the motion for summary judgment at which the parties presented arguments. At the conclusion of the hearing, the court granted the defendants' motion from the bench. The next day, the court filed its written order, explaining that because Kuri had failed to controvert the defendants' statements of uncontroverted facts, such facts were deemed admitted under Kansas Supreme Court Rule 141(f)(2) (2017 Kan. S. Ct. R. 204). The court also concluded that Kuri had presented claims for battery, libel, and slander and that such claims were barred by the one-year statute of limitations contained in K.S.A. 60-514. Finally, the court ruled that the six-month saving statute in K.S.A. 60-518 did not apply. It reasoned that even though Kuri had timely filed suit in federal court, because such claims were dismissed and because Kuri had failed to file her state court petition within one year from the events

on which her claims were based or within six months after the dismissal by the federal court, the saving statute did not save her claims.

Kuri timely appeals.

DID THE DISTRICT COURT ERR IN GRANTING SUMMARY JUDGMENT
TO DEFENDANTS BASED ON THE STATUTE OF LIMITATIONS?

Kuri first asserts that the district court erred in granting summary judgment based on the one-year statute of limitations period, arguing a 10-year statute of repose applies to her claims.

"Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Drouhard-Nordhus v. Rosenquist*, 301 Kan. 618, 622, 345 P.3d 281 (2015) (quoting *Stanley Bank v. Parish*, 298 Kan. 755, Syl. ¶ 1, 317 P.3d 750 [2014]).

"Where the defendant pleads a statute of limitation and moves for summary judgment and it appears that the action is barred by the appropriate statute of limitation and there is no genuine issue as to any material fact in connection with such statute, then the motion should be granted." *Hartman v. Stumbo*, 195 Kan. 634, Syl. ¶ 2, 408 P.2d 693 (1965)." *Rockers v. Kansas Turnpike Authority*, 268 Kan. 110, 112, 991 P.2d 889 (1999).

Determining whether the statute of limitations period has expired requires us to engage in statutory interpretation, which is a question over which we exercise unlimited review. *Kelly v. VinZant*, 287 Kan. 509, 514-15, 197 P.3d 803 (2008). The most fundamental rule of statutory construction is "the intent of the legislature governs if that intent can be ascertained." *State ex rel. Schmidt v. City of Wichita*, 303 Kan. 650, 659, 367 P.3d 282 (2016). When a statute is plain and unambiguous, we should not speculate about the

legislative intent behind that clear language and should refrain from reading something into the statute that is not readily found in its words. See *Ullery v. Othick*, 304 Kan. 405, 409, 372 P.3d 1135 (2016).

As an initial matter, we note the district court characterized Kuri's claims as ones for battery, slander, and libel. "Pro se pleadings are [to be] liberally construed, giving effect to the pleading's content rather than the labels and forms used to articulate the [party's] arguments." *State v. Gilbert*, 299 Kan. 797, 802, 326 P.3d 1060 (2014) (quoting *State v. Kelly*, 291 Kan. 563, 565, 244 P.3d 639 [2010]). Battery as a civil claim is defined as "the unprivileged touching or striking of one person by another, done with the intent of bringing about either a contact or an apprehension of contact, that is harmful or offensive." *Baska v. Scherzer*, 283 Kan. 750, 756, 156 P.3d 617 (2007); PIK Civ. 4th 127.02 (2017 Supp.). Kansas caselaw has not expressly addressed whether "poisoning" another is a battery, but the United States Supreme Court has held that a person can commit domestic violence battery by poisoning. See *United States v. Castleman*, 572 U.S. ___, 134 S. Ct. 1405, 1414-15, 188 L. Ed. 2d 426 (2014); see also 6A C.J.S. Assault, § 85 (following *Castleman*). Moreover, *Dobbs*, The Law of Torts, ch. 3 (Battery) § 31, p. 61 (2000), states that poisoning another's drink qualifies as a touching: "The plaintiff is of course touched if she is struck by a bullet, but she is also touched if she drinks poison in her cup by the defendant." "False defamatory words, if spoken, constitute a slander; if written and published, a libel." *State v. Osborn*, 54 Kan. 473, 492, 38 P. 572 (1894) (Horton, C.J., concurring). Neither party challenges the district court's findings on the nature of Kuri's claims, so we assume the district court's characterization of Kuri's claims is correct.

Given the nature of Kuri's claims, the district court ruled they were barred by the one-year statute of limitations provided in K.S.A. 60-514(a) and (b). We agree.

K.S.A. 60-514 states in relevant part:

"The following actions shall be brought within one year:

"(a) An action for libel or slander.

"(b) An action for assault, battery, malicious prosecution, or false imprisonment."

Moreover, K.S.A. 60-510 mandates that petitioners must file their claims within the prescribed statute of limitations, after the cause of action accrues. A battery claim accrues at the time of the battery. *Kelly*, 287 Kan. at 527. A slander or libel claim "accrues upon publication of the defamatory statement." *Stephens v. Van Arsdale*, 227 Kan. 676, 693, 608 P.2d 972 (1980).

As applied to Kuri's battery claim, Kuri alleged her coworkers must have poisoned her about four days before the drug test on January 23, 2015. Moreover, Kamau received the positive drug test showing Kuri had methadone in her system on January 29, 2015. The district court correctly found that Kuri's battery claim accrued before the end of January 2015, meaning that according to K.S.A. 60-514(b), Kuri was required to bring a claim for battery on or before the end of January 2016.

As applied to Kuri's claims for libel and slander, Kuri alleged that her coworkers wrote false incident reports on or before January 30, 2015, and that Kamau sent the reports to the DEA shortly thereafter. A DEA representative interviewed Matrix Center employees on February 25, 2015. Kuri also reported to the Wichita Police Department that a coworker poisoned her, and an officer interviewed Kamau on February 11, 2015, based on Kuri's police report. Finally, in response to a subpoena, Kamau provided the written incident reports to the Board of Nursing on August 24 and August 31, 2015.

Based on this timeline, the district court was correct in finding that any claim for slander—spoken defamation to the DEA or the WPD—accrued in February 2015, that any libel claim—written defamation—for publishing the defamatory words in the reports to the DEA accrued in February 2015, and that any libel claim for sending a copy of the

DEA reports to the Board of Nursing accrued in August 2015. Therefore, under K.S.A. 60-514(a), Kuri's various claims for slander and libel due to publication to the DEA and the WPD needed to be brought no later than February 2016, while any libel claims arising out of the reports having been sent to the Board of Nursing had to be brought no later than August 2016.

However, Kuri did not file her petition in the district court until January 18, 2017. While it is true that Kuri timely filed her federal court lawsuit on September 29, 2015, that case was dismissed on February 8, 2016, and the dismissal was affirmed on appeal on May 18, 2016. And the saving statute, K.S.A. 60-518, does not save Kuri because that statute only protects a party whose statute of limitations period runs during the pendency of the first lawsuit or within six months of the dismissal of the first lawsuit. If Kuri had filed her petition in the district court on or before November 18, 2016—six months after the dismissal of her federal case was affirmed on appeal—her claims would be timely. See *Seaboard Corporation v. Marsh Inc.*, 295 Kan. 384, 406, 284 P.3d 314 (2012) ("[T]he Kansas saving statute, K.S.A. 60-518, applies even if the first action was not filed in a Kansas state court."). Based on the above accrual dates, Kuri filed her petition beyond the one-year statute of limitations period set forth in K.S.A. 60-514, thus barring her battery, libel, and slander claims.

This notwithstanding, Kuri makes the argument that she had time to file her claims under a 10-year statute of repose. We think Kuri misunderstands the nature of a statute of repose. As our court recently explained in great detail, similar to a statute of limitations, which requires an injured party to bring suit within a certain period of time after the party's injury, a statute of repose also serves to cut off an injured party's claim after a certain period of time from the defendant's injurious act even if the injury itself occurred years later and within the statute of limitations. See *Doe v. Poprovak*, 55 Kan. App. 2d ___, ___ P.3d ___ (No. 115,282, filed June 9, 2017), slip op. at 9-10. A statute of repose

does not act to extend an injured party's time to file a claim but limits it and is unhelpful to Kuri in this case.

But even if the statute of repose contained in K.S.A. 60-513(b), which applies a 10-year statute of repose to *some* tort claims, was somehow to act as a time extender, this statute does not apply to battery, libel, and slander claims. Moreover, K.S.A. 60-514, the statute which governs the limitations period for Kuri's claims, does not include a statute of repose. Because we cannot read something into a statute that is not readily found in its words, *Ullery*, 304 Kan. at 409, Kuri's claim that a 10-year statute of repose applies to her claims is without merit.

The district court did not err in granting summary judgment because the one-year statute of limitations in K.S.A. 60-514 bars Kuri's battery, libel, and slander claims.

DID THE DISTRICT COURT DENY KURI DUE PROCESS
IN GRANTING SUMMARY JUDGMENT?

Kuri's second argument is that the district court's grant of summary judgment denied her due process by prematurely ending discovery and denying her the opportunity to present her case to a jury.

Constitutional procedural due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Village Villa v. Kansas Health Policy Authority*, 296 Kan. 315, 331, 291 P.3d 1056 (2013) (citing *Winston v. Kansas Dept. of SRS*, 274 Kan. 396, 409, 49 P.3d 1274 [2002]). But before we may decide whether a party was provided sufficient procedural due process, we must first determine whether a protected liberty or property interest is at stake. If a protected interest is implicated, only then must we determine the nature and extent of the process that is due. *Village Villa*, 296 Kan. at 331.

Kuri asserts that the defendants' actions negatively impacted her property interest in her state nursing license. But the district court's resolution of the civil suit against the defendants does not impact Kuri's entitlement to her nursing license. Rather, a separate action brought by the Kansas State Board of Nursing under K.S.A. 65-1113 et seq. impacts Kuri's continued right to a state nursing license.

Admittedly, the district court's summary judgment does affect Kuri's right to recover damages for the defendants' alleged civil harms. Though Kuri seeks damages for her civil claims, "[r]esearch has not disclosed any case where a Kansas court has held that a plaintiff has a protected property interest in a civil suit" against private defendants. *Howard v. Kansas Dept. of Corrections*, No. 97,822, 2007 WL 2992506, at *2 (Kan. App. 2007) (unpublished opinion). Therefore, it does not appear that a protected liberty or property interest is at stake. Accordingly, Kuri is only entitled to such procedural due process as is provided by rule or statute.

Kuri argues that summary judgment precluded her right to full discovery.

"Ordinarily, a summary disposition of a pending case before the district court should not be granted until discovery is complete. [Citation omitted.]' *Montoy v. State*, 275 Kan. 145, 149, 62 P.3d 228 (2003). 'However, if the facts pertinent to the material issues are not controverted, summary judgment may be appropriate even when discovery is unfinished. [Citation omitted.]' *Med James, Inc. v. Barnes*, 31 Kan. App. 2d 89, 96, 61 P.3d 68, *rev. denied* 275 Kan. 965 (2003). An issue of fact is genuine when it has legal controlling force as to the controlling issue." *National Restoration Co. v. Merit General Contractors*, 41 Kan. App. 2d 1010, 1031, 208 P.3d 755 (2009), *rev. denied* 290 Kan. 1094 (2010).

Here, Kuri did not controvert or dispute the relevant accrual dates of her battery, libel, or slander claims. The accrual dates of each claim are material facts because each date has legal controlling force over whether the statute of limitations expired under

K.S.A. 60-514. Because no genuine issue of material fact exists as to the accrual dates of her claims, the district court did not err in granting summary judgment even though discovery had not been completed. We also note that Kuri had a procedural avenue to contest the granting of summary judgment without discovery having been completed. K.S.A. 2016 Supp. 60-256(f) allows a party opposing summary judgment to submit an affidavit or declaration to the court explaining why "it cannot present facts essential to justify its opposition[.]" Kuri never did this.

Next, Kuri claims that the district court denied her due process by denying her a jury trial. K.S.A. 2016 Supp. 60-238(a) provides: "The right of trial by jury as declared by section 5 of the bill of rights in the Kansas constitution, or as provided by a state statute, is preserved to the parties inviolate." But "[t]he right to a jury trial in a civil proceeding . . . is not absolute." *Waggener v. Seever Systems, Inc.*, 233 Kan. 517, 520, 664 P.2d 813 (1983); *Village Gardens Condominium Owners Assn. v. Leo*, No. 114, 498, 2016 WL 6821955, at *4 (Kan. App. 2016) (unpublished opinion). In appropriate instances, summary judgment is proper for resolving cases when no genuine issues of material fact exist to be resolved at trial and when the disputed facts show the moving party is entitled to judgment as a matter of law. *Drouhard-Nordhus*, 301 Kan. at 622. Here, Kuri does not identify any genuine issues of material fact that should have been tried to a jury nor does she argue that the district court erred in finding that no genuine issue of material fact exists. Therefore, Kuri's contention that the district court's grant of summary judgment denied her due process necessarily fails.

Affirmed.