

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 14, 2026

Christopher M. Wolpert
Clerk of Court

KATE LEWIS; JEFFREY LEWIS,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 25-1036
(D.C. No. 1:22-CV-01834-MDB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH, MORITZ, and FEDERICO**, Circuit Judges.

Kate Lewis suffers from terminal, metastatic breast cancer. She and her husband allege that a lump in her left breast was negligently misdiagnosed at a federally funded clinic in February 2017, leading to delays in treatment and ultimately a worse prognosis. The district court granted summary judgment to the United States on the basis that Colorado's three-year statute of repose had run before the Lewises filed their complaint. *See* Colo. Rev. Stat. § 13-80-102.5(1). We disagree. One of the exceptions to the statute of repose unambiguously applies on the facts here. We thus reverse and remand for further proceedings.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Background¹

In February 2017, Lewis visited Peak Vista Community Health Center—a federally funded clinic in Colorado Springs, Colorado—because she felt a lump in her left breast. A nurse practitioner examined Lewis’s breast; whether she identified any abnormalities is disputed, but she assured Lewis she had nothing to worry about and did not need any further testing.

A year later, Lewis underwent breast augmentation. At no point during the pre- or post-operation period did the plastic surgeon identify a lump, and Lewis never mentioned her 2017 examination. More than a year after that, Lewis noticed deformation in her left breast. In June 2019, a doctor identified a lump, and in July 2019, the plastic surgeon confirmed the lump, but a follow-up mammogram was negative. In a December 2019 appointment with the plastic surgeon, Lewis reported that the lump had become painful; the plastic surgeon performed a lumpectomy and informed Lewis that it was cancerous.

Lewis underwent a double mastectomy in January 2020, and she discovered the cancer had spread into her lymph nodes. Lewis began treatment with an oncologist the next month and learned a year later that her prognosis was likely terminal.

The Lewises filed an administrative claim with the Department of Health and Human Service in December 2021. *See* 28 U.S.C. § 2672 (authorizing federal agencies to

¹ We take these undisputed facts from the parties’ summary-judgment briefing, viewing them in the light most favorable to the Lewises. *See Chase Mfg., Inc. v. Johns Manville Corp.*, 84 F.4th 1157, 1168 (10th Cir. 2023); *Manning v. City of Tulsa*, 170 F.4th 1287, 1293 n.1 (10th Cir. 2026) (“We take these facts from the parties’ summary-judgment pleadings, noting where they are disputed.”), *cert. denied*, No. 25-1420, 2026 WL 2976652 (U.S. Oct. 5, 2026).

settle claims against United States under certain circumstances); *id.* § 2675(a) (requiring claimant to file administrative claim before filing lawsuit). The Department denied the claim in July 2022, and the Lewises filed this action the same month.

The government responded with a motion to dismiss, arguing that the Lewises' claims were barred by Colorado's three-year statute of repose for medical-malpractice claims. The district court initially agreed, rejecting the Lewises' arguments that (1) federal law preempted the statute of repose and (2) a statutory exception to the statute of repose applied here. However, upon the Lewises' motion for reconsideration, the district court reversed course, concluding that it was possible that factual questions precluded application of Colorado's statute of repose at that early stage.

The Lewises then filed an amended complaint, and the district court denied the government's renewed motion to dismiss. After discovery, the government moved for summary judgment, again arguing that Colorado's three-year statute of repose for medical-malpractice claims barred the Lewises' claim. In an oral ruling, the district court agreed and entered judgment for the government.

The Lewises appeal.

Analysis

We review the grant of summary judgment de novo, employing “the same standard that applies in the district court.” *Chase Mfg.*, 84 F.4th at 1168. Under that standard, “[s]ummary judgment is appropriate ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Id.* (quoting Fed. R. Civ. P. 56(a)).

As a matter of statutory background, the Lewises assert their claim under the Federal Tort Claims Act (FTCA), which “address[es] the United States’ liability for torts committed by its agents.” *Martin v. United States*, 605 U.S. 395, 409 (2025). Broadly, the FTCA creates government liability in “circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346(b)(1); *see also* 28 U.S.C. § 2674. Thus, “the FTCA’s liability rule incorporates state law.” *Martin*, 605 U.S. at 410. So although federal law governs procedural matters that arise in FTCA cases,² courts typically apply the substantive law of the state where the allegedly tortious conduct occurred. *Id.*; *see also Gonzalez v. United States*, 80 F.4th 183, 193 (2d Cir. 2023).

The Lewises concede, and the district court held, that Colorado’s statute of repose constitutes substantive law. For purposes of this appeal, we accept the Lewises’ concession. *See Bennett v. United States*, 44 F.4th 929, 936 (9th Cir. 2022) (accepting plaintiff’s concession that Washington state statute of repose is substantive); *cf. Augutis v. United States*, 732 F.3d 749, 753–54 (7th Cir. 2013) (holding that Illinois statute of repose is substantive); *Anderson v. United States*, 669

² For instance, a plaintiff asserting a tort claim against the government must first file an administrative claim with the relevant federal agency “within two years after such claim accrues” and must then file their complaint “within six months after the date of . . . notice of final denial of the claim by the agency.” 28 U.S.C. § 2401(b). The government has conceded the Lewises’ compliance with the six-month provision. And its summary-judgment motion does not challenge the Lewises’ compliance with the two-year provision.

F.3d 161, 165, 171 (4th Cir. 2011) (explaining that “statutes of repose are substantive limitations on liability” and certifying to state court question of whether Maryland statute is one of limitation or repose). However, the Lewises advance several other reasons why Colorado’s statute of repose does not bar their claims. We begin with their position that a statutory exception to the statute of repose applies here.

This argument requires interpreting state law, so we apply Colorado’s rules of statutory construction. *See Finstuen v. Crutcher*, 496 F.3d 1139, 1148 (10th Cir. 2007). Under Colorado law, statutory interpretation aims to “effectuate the legislature’s intent,” starting with the “plain and ordinary meaning of the statutory language, reading its words and phrases in context.” *Sentinel Colo. v. Rodriguez*, 577 P.3d 48, 53 (Colo. 2025). In so doing, we “construe [a statute’s] provisions to be consistent with the overall statutory design” and to avoid “an interpretation that leads to an illogical or absurd result.” *Id.* Additionally, we must “respect the legislature’s choice of language,” meaning we may “not add or subtract words [to or] from a statute.” *Smokebrush Found. v. City of Colorado Springs*, 410 P.3d 1236, 1240 (Colo. 2018).

Colorado’s limitations statute for medical-malpractice claims includes both a two-year statute of limitations and, as especially relevant here, a three-year statute of repose³:

³ By way of background, statutes of limitations and statutes of repose are both “mechanisms used to limit the temporal extent or duration of liability for tortious acts.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 7 (2014). “But the time periods specified are measured from different points, and the statutes seek to attain different

Except as otherwise provided in this section . . . , no action alleging negligence . . . or other action arising in tort or contract to recover damages from any health[]care institution . . . or any health[]care professional . . . shall be maintained unless such action is instituted within two years after the date that such action accrues pursuant to [Colo. Rev. Stat. §] 13-80-108(1), *but in no event shall an action be brought more than three years after the act or omission which gave rise to the action.*

Colo. Rev. Stat. § 13-80-102.5(1) (emphasis added).⁴

But § 13-80-102.5(3) provides several exceptions to the general rules of § 13-80-102.5(1):

The limitation of actions provided in subsection (1) of this section does not apply under the following circumstances:

- (a) If the act or omission which gave rise to the cause of action was knowingly concealed by the person committing such act or omission, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or
- (b) If the act or omission consisted of leaving an unauthorized foreign object in the body of the patient, in which case the action may be maintained if instituted within two years after the person bringing the action discovered, or in the exercise of reasonable diligence and concern should have discovered, the act or omission; or

purposes and objectives.” *Id.* Statutes of limitations create a deadline for filing a civil lawsuit based on an accrual date (typically based on having constructive notice of a claim) and incentivize diligent filing of claims. *Id.* at 7–8. “A statute of repose, on the other hand, puts an outer limit on the right to bring a civil action. That limit is measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant.” *Id.* at 8. Statutes of repose also encourage timely filing, but they additionally reflect “a legislative judgment that a defendant should ‘be free from liability after the legislatively determined period of time.’” *Id.* (quoting 54 C.J.S. *Limitations of Actions* § 7 (2010)).

⁴ The cross-referenced statute, § 13-80-108(1), defines the date of accrual as “the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence.”

(c) *If both the physical injury and its cause are not known or could not have been known by the exercise of reasonable diligence; or*

(d) If the action is brought by or on behalf of:

(I) A minor under eight years of age who was under six years of age on the date of the occurrence of the act or omission for which the action is brought, in which case the action may be maintained at any time prior to his attaining eight years of age; or

(II) A person otherwise under disability as defined in [Colo. Rev. Stat. §] 13-81-101, in which case the action may be maintained within the time period as provided in [Colo. Rev. Stat. §] 13-81-103.

(e) If the claim arises against a health[]care provider pursuant to [Colo. Rev. Stat. §] 13-21-132.

§ 13-80-102.5(3) (emphasis added).⁵ The Lewises rely on subsection (3)(c), italicized above, arguing that Lewis’s physical injury and its cause couldn’t have been known by the exercise of reasonable diligence.

Interpreting subsection (3)(c), the district court reasoned that the phrase “could not have been known by the exercise of reasonable diligence” implied “some period of time within which a plaintiff can and should take reasonable steps to discover her injury.” App. vol. 1, 77. Even though no such time period appears in the exception itself, the district court concluded that “the statute of repose will not apply if ‘both the injury and its cause are not known or discoverable by the exercise of reasonable diligence *within the three-year period*’” of repose. *Id.* at 78 (cleaned up) (quoting

⁵ The statute cross-referenced in subsection (3)(e) creates a cause of action related to assisted reproduction for knowing use of donor gametes without the express consent of the patient. *See* § 13-21-132.

Jones v. United States, No. 05-cv-00369, 2006 WL 8454880, at *4 (D. Colo. July 24, 2006) (unpublished)). After reviewing the facts, the district court found the exception in subsection (3)(c) inapplicable because Lewis discovered her injury during, not after, the three-year repose period.

We disagree with the district court’s interpretation of subsection (3)(c). At the outset, subsection (3)(c) contains no language whatsoever suggesting that its exception is subject to a statute of repose—that is, it contains no language indicating that the exception applies only if the action is brought within a time period running from the date of the last culpable act or omission of the defendant. *See CTS Corp.*, 573 U.S. at 8. Rather, it contains accrual language indicating that the exception applies “[i]f both the physical injury and its cause are not known or could not have been known by the exercise of reasonable diligence.” § 13-80-102.5(3)(c). Or, as the government puts it, “[t]he text of the statute explains *only* that, where the [subsection] (3)(c) exception is met, the statute of repose does not apply.” *Aplee*. Br. 38 (emphasis added). To be sure, the government makes this statement as a complaint, but in so doing, it implicitly concedes that its preferred interpretation has no basis in the statute’s plain language. And we, as a court interpreting the legislature’s intent, are not free to add language to a statute. *See Smokebrush Found.*, 410 P.3d at 1240.

Nor does the statute’s structure support the district court’s interpretation. The umbrella language of this section—that “[t]he limitation of actions provided in subsection (1) . . . does not apply,” § 13-80-102.5(3)—indicates that the listed

exceptions displace both the two-year statute of limitations *and* the three-year statute of repose. In so doing, some exceptions expressly create replacement statutes of limitation; for instance, subsections (3)(a) and (3)(b) set new accrual dates for claims premised on concealed negligence and unauthorized foreign bodies. But *none* of the exceptions includes a replacement statute of repose. Even the Colorado Supreme Court, in considering a prior version of the statute, treated these as “exceptions to the three-year statute of repose.” *Austin v. Litvak*, 682 P.2d 41, 47, 53 (Colo. 1984).

Both parties appear to misunderstand this point, at least at times. The Lewises describe subsections (3)(a) and (b) as “impos[ing] a two-year *repose* period.” Aplt. Br. 29 (emphasis added). The government similarly discusses these two subsections as if they create new periods of repose, seeking to contrast subsection (3)(c), which it says “has no text setting a new repose period.” Aplee. Br. 39 (cleaned up). But textually, these subsections do not create a new repose period “measured . . . from the date of the last culpable act or omission of the defendant.” *CTS Corp.*, 573 U.S. at 8. Instead, subsections (3)(a) and (b) create a new accrual date for a new two-year statute of limitations: rather than accruing on “the date both the injury and its cause are known or should have been known,” § 13-80-108(1), claims falling under these subsections instead accrue on the date that the claimant “discovered, or . . . should have discovered, the act or omission,” § 13-80-102.5(3)(a), (b). With this understanding of the statute’s structure, subsection (3)(c) specifies an accrual date for statute-of-limitations purposes, *not* a repose period. Simply stated, the district court erred by reading a statute of repose into a subsection that was designed to provide an

exception to the statute of repose.

In sum, the plain text compels the conclusion that in cases of “physical injury” where the “injury and its cause are not known or could not have been known by the exercise of reasonable diligence,” § 13-80-102.5(1)’s three-year statute of repose doesn’t apply.⁶ § 13-80-102.5(3)(c). We acknowledge the government’s argument that subsection (3)(c)’s exception could be read to swallow the rule.⁷ But we are not being asked to decide in this appeal whether the revised accrual date provided in subsection (3)(c) is more limited than that provided in § 13-80-108(1). Nor need we consider how to resolve the fact that subsection (3)(c) doesn’t expressly state the length of the limitations period that runs from its accrual date. Because federal law provides the statute of limitations in this case, we are concerned only with whether subsection (3)(c) somehow reinstates a statute of repose, and we conclude that the plain language does not.

Applying our plain-language interpretation to the facts here, neither party

⁶ Because our interpretation flows directly from the plain text of the statute, we need not reach the parties’ arguments related to the legislature’s intent in adopting subsection (3)(c). *See Sentinel Colo.*, 577 P.3d at 53 (“If a statute is clear and unambiguous, then we will not proceed to interpretive rules of statutory construction,” including “the legislature’s intent.” (quoting *Elder v. Williams*, 477 P.3d 694, 698 (Colo. 2020))).

⁷ To put a finer point on it, the exception to the statute of repose in subsection (3)(c) essentially reinstates the original accrual date, minus the statute of repose. *Compare* § 13-80-108(1) (defining accrual date as “the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence”), *with* § 13-80-102.5(3)(c) (stating that limitations periods don’t apply “[i]f both the physical injury and its cause are not known or could not have been known by the exercise of reasonable diligence”).

disputes that Lewis’s injury—whether it is her cancer or the metastasis of her cancer—is a physical injury. Nor is there any dispute that a period of time passed during which Lewis neither knew, nor could have known, about the injury and its cause. She was not diagnosed with cancer until several years after her February 2017 examination. And her mammogram in July 2019 was negative. Therefore, subsection (3)(c) applies, and the three-year statute of repose does not. And because the statute of repose doesn’t apply, we need not reach the Lewises’ alternative argument that genuine disputes of material fact exist on whether they filed their claims within the statute of repose.⁸

Conclusion

Because exception (3)(c) applies here, Colorado’s three-year statute of repose period doesn’t bar the Lewises’ claim. We reverse and remand for further proceedings.

Entered for the Court

Nancy L. Moritz
Circuit Judge

⁸ We likewise need not reach the Lewises’ arguments that the FTCA preempts Colorado’s statute of repose and that the district court’s interpretation of § 13-80-102.5(3)(c) renders it unconstitutional.