

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DELORES SCOTT,	:	APPEAL NO. C-190554
	:	TRIAL NO. A-1706441
Plaintiff-Appellant,	:	
and	:	<i>JUDGMENT ENTRY.</i>
RILEY SCOTT,	:	
Plaintiff,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants-Appellees,	:	
and	:	
UC Health, et al.,	:	
Defendants.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal represents one in over hundreds of cases filed against Durrani and the area hospitals where it is asserted that he performed hundreds of improper and unnecessary surgeries over the course of several years. Scott was referred to see Durrani for back pain in 2010. Durrani performed spinal surgery on Scott on September 13, 2010. After surgery, Scott experienced increased pain and became

paralyzed in her right leg. On May 9, 2014, Scott and her husband filed suit in the Butler County Court of Common Pleas for claims stemming from the surgery. This complaint was voluntarily dismissed on November 25, 2015. On August 15, 2016, Scott and her husband filed a similar complaint in the Hamilton County Court of Common Pleas against Durrani, the Center for Advanced Spine Technologies, Inc., (“CAST”), and others for claims stemming from the surgery.¹ On March 26, 2018, Durrani and CAST filed a joint motion for judgment on the pleadings, arguing that the claims were time-barred by the statute of repose. The trial court agreed and entered judgment in their favor on August 27, 2019. This appeal now follows.

In a sole assignment of error, Scott argues that the trial court erred by granting defendants-appellees’ motion for judgment on the pleadings and dismissing the case. In support of this contention, she presents six issues for review: (1) whether R.C. 2305.19(A), the saving statute, allows her claims to survive beyond the expiration of the statute of repose; (2) whether revocation of Durrani’s medical license transforms the claims into nonmedical claims; (3) whether the repose period was tolled under R.C. 2305.15(A); (4) whether the doctrines of fraud or equitable estoppel apply to bar application of the statute of repose; (5) whether the fraud claims are “medical claims” subject to R.C. 2305.113; and (6) whether the trial court erred in dismissing her spoliation-of-evidence claims.

R.C. 2305.19(A)

In the first issue presented for review, Scott asserts that R.C. 2305.19(A) allows her claims against Durrani and CAST to survive beyond the expiration of the

¹ Riley Scott was dismissed by this court as a plaintiff-appellee on January 10, 2020. West Chester Hospital, LLC, and UC Health were dismissed as defendants in the trial court on June 20, 2019.

statute of repose. This argument is squarely foreclosed by the Ohio Supreme Court’s decision in *Wilson v. Durrani*, Slip Opinion No. 2020-Ohio-6827. Therefore, we find no error in the trial court’s decision on this issue.

Revocation of Durrani’s Medical License

Scott argues that her claims are not “medical claims” subject to R.C. 2305.113 because Durrani had his medical license revoked on March 12, 2014. We disagree. “[T]here is ‘nothing in the [statute of repose] to suggest that a medical claim based upon the medical treatment rendered by a licensed physician is suddenly transformed into a “non-medical” claim if that physician’s license is revoked years after the cause of action arose * * *.’” *Elliot v. Durrani*, 1st Dist. Hamilton No. C-180555, 2021-Ohio-3055, ¶ 56, quoting *Levandofsky v. Durrani*, S.D. Ohio No. 1:18-CV-809, 2020 WL 5535872 (Feb. 26, 2020). Durrani was licensed to practice medicine when he performed the surgery on Scott. Therefore, there is nothing to suggest that Durrani’s subsequent loss of his license in any way transformed the nature of the claims she asserted.

R.C. 2305.15(A)

Scott argues that Durrani’s flight in December of 2013 tolls all limitations periods as to him under R.C. 2305.15(A). We recently discussed this issue in *Elliot* and held that R.C. 2305.15(A) may apply to toll the statute of repose found in R.C. 2305.113(C). *Elliot* at ¶ 43. R.C. 2305.15(A) provides:

When a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals self, the period of limitation for the commencement of the action as provided in sections 2305.04 to 2305.14 * * * of the Revised Code does not begin to run until the person comes into the state or while the person is so

absconded or concealed. After the cause of action accrues if the person departs from the state, absconds, or conceals self, the time of the person's absence or concealment shall not be computed as any part of a period within which the action must be brought.

In this case, Scott asserts that Durrani fled the country in December 2013, less than four years after the surgery. Durrani does not dispute this allegation.² Therefore, the statute of repose is tolled and does not bar Scott's claims against Durrani because the repose period has yet to run. However, the same result cannot be said for Scott's claims against CAST. "For R.C. 2305.15(A) to apply, the person against whom the cause of action accrues must be out of state, absconded, or concealed." *Elliot*, 1st Dist. Hamilton No. C-180555, 2021-Ohio-3055, at ¶ 45. Scott does not contend that CAST is out of the state, absconded, or concealed. Therefore, the tolling provision in R.C. 2305.15(A) applies only to toll the statute of repose regarding the claims against Durrani but does not operate to toll the statute of repose regarding the claims against CAST. *See Elliot* at ¶ 50. Accordingly, Scott's claims against CAST are barred by the statute of repose.

Doctrines of Fraud and Equitable Estoppel

Scott argues that the trial court erred by finding that there is no fraud or equitable-estoppel exception to the statute of repose. This court has previously held that there is no fraud or equitable-estoppel exception to the statute of repose. *E.g.*, *Crissinger v. Durrani*, 2017-Ohio-9256, 106 N.E.3d 798, ¶ 24 (1st Dist.); *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 13 (1st Dist.), *appeal not accepted*, 158 Ohio St.3d 1436, 2020-Ohio-877, 141 N.E.3d 250; *Couch v. Durrani*, 1st Dist.

² *See Appellees' Supplemental Brief*, 18 ("Dr. Durrani evidently left for Pakistan in December 2013.").

Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, ¶ 27, *appeal not accepted*, 164 Ohio St.3d 1420, 2021-Ohio-2923, 2021 WL 3884909; *Janson v. Christ Hospital, Inc.*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, ¶ 24. Therefore, we find no error in the trial court’s decision on this issue.

Fraud Claims

Scott argues that the trial court erred by holding that her fraud claims are “medical claims,” and not independent, nonmedical fraud claims. This court has previously considered substantially the same argument and found the fraud claims to be “medical claims” subject to the statute of repose. *E.g., Freeman* at ¶ 20; *Couch* at ¶ 29-30; *Janson* at ¶ 31. Therefore, we find no error in the trial court’s decision on this issue.

Spoliation-of-Evidence Claims

Scott argues that the trial court erred by dismissing her spoliation-of-evidence claim against CAST. One of the elements a plaintiff must show to prevail on a spoliation-of-evidence claim is disruption of his or her case. *Smith v. Howard Johnson Co.*, 67 Ohio St.3d 28, 29, 615 N.E.2d 1037 (1993). Where all other claims in a case are properly dismissed by the trial court, a plaintiff will ultimately be unable to prove disruption of his or her case and a spoliation-of-evidence claim will inevitably fail. *Janson* at ¶ 32. Here, all of Scott’s other claims against CAST were properly dismissed by the trial court. Therefore, dismissal of the spoliation-of-evidence claim was proper.

Scott did not assert any argument that the trial court erred in dismissing her remaining claims against CAST. Therefore, we find that Scott abandoned any

argument regarding her respective remaining claims. *See Janson*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, at ¶ 33. The assignment of error is sustained as to Scott's claims against Durrani and overruled as to Scott's claims against CAST.

For the foregoing reasons, we affirm the trial court's judgment regarding Scott's claims against CAST; however, we reverse the trial court's judgment regarding Scott's claims against Durrani and remand this cause to the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed 50% to appellant and 50% to Durrani under App.R. 24.

ZAYAS, P.J., CROUSE and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on September 17, 2021,
per order of the court_____.

Administrative Judge