

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

DEBORAH KIDD,	:	APPEAL NOS. C-190618;
		C-200018
Plaintiff-Appellant,	:	TRIAL NO. A-1706616
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
CENTER FOR ADVANCED SPINE	:	
TECHNOLOGIES, INC.,	:	
CHRIST HOSPITAL,	:	
and	:	
TRIHEALTH, INC., f.d.b.a. GOOD	:	
SAMARITAN HOSPITAL,	:	
Defendants-Appellees,	:	
WEST CHESTER HOSPITAL, LLC, et	:	
al.,	:	
Defendants.	:	

DEBORAH DOYLE,	:	APPEAL NO. C-200019
		TRIAL NO. A-1505421
Plaintiff-Appellant,	:	
vs.	:	
CHRIST HOSPITAL,	:	
Defendant-Appellee,	:	
and	:	
ABUBAKAR ATIQ DURRANI, M.D., et	:	
al.,	:	
Defendants.	:	

OHIO FIRST DISTRICT COURT OF APPEALS

TRACY WALSH, : APPEAL NO. C-200020
Plaintiff-Appellant, : TRIAL NO. A-1700286
and :
GERALD WALSH, :
Plaintiff, :
vs. :
CHRIST HOSPITAL, :
Defendant-Appellee, :
and :
ABUBAKAR ATIQ DURRANI, M.D., et :
al., :
Defendants. :

RAHMAN NISBETT, : APPEAL NO. C-200021
Plaintiff-Appellant, : TRIAL NO. A-1503128
and :
LATONYA NISBETT :
Plaintiff, :
vs. :
CHRIST HOSPITAL, :
Defendant-Appellee, :
and :
ABUBAKAR ATIQ DURRANI, M.D., et :
al., :
Defendants. :

ORRIS SMOOTE, : APPEAL NO. C-200022
Plaintiff-Appellant, : TRIAL NO. A-1504461
vs. : *JUDGMENT ENTRY.*
CHRIST HOSPITAL, :
Defendant-Appellee, :
and :
ABUBAKAR ATIQ DURRANI, M.D., et :
al., :
Defendants. :

The court sua sponte removes these cases from the regular calendar and places them 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.

These consolidated appeals now before us represent several of 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.

Plaintiff-appellant Deborah Kidd began seeing Durrani after experiencing pain in her lower back. On September 7, 2006, Durrani performed spine surgery on Kidd at the Christ Hospital (“TCH”). Kidd experienced the same pain after surgery and began experiencing some numbness in her legs. Kidd continued follow-up care with Durrani. On September 3, 2010, Durrani performed a second surgery on Kidd at Good Samaritan Hospital (“GSH”). Kidd experienced increased pain after surgery.

On August 13, 2012, Durrani performed a third surgery on Kidd at West Chester Hospital. After surgery, Kidd experienced new and increased pain.

On August 20, 2013, Kidd filed suit in the Butler County Court of Common Pleas for claims stemming from the surgeries. This complaint was voluntarily dismissed on November 25, 2015. On August 15, 2016, Kidd filed a similar complaint in the Hamilton County Court of Common Pleas against Durrani, the Center for Advanced Spine Technologies, Inc., (“CAST”), TCH, and GSH, among others, for claims stemming from the surgeries.¹ Subsequently, Durrani and CAST filed a joint motion for judgment on the pleading, and TCH and GSH filed respective motions to dismiss, arguing that the claims against them were time-barred by the statute of repose. The trial court agreed and granted each respective motion.

Plaintiff-appellant Deborah Doyle was referred to Durrani in 2009 after experiencing pain due to herniated discs in her back. Durrani performed spine surgery on Doyle on April 15, 2009, at TCH. Doyle was “bed ridden” for over a year after the surgery and now suffers from permanent and chronic pain. On October 9, 2015, Doyle filed a complaint against TCH, among others, asserting claims stemming from the surgery. TCH subsequently filed a motion to dismiss the complaint, asserting that the claims were time-barred by the statute of repose. The trial court agreed and entered final judgment in favor of TCH on December 31, 2019.

Plaintiff-appellant Tracy Walsh first met with Durrani in 2006. Durrani first performed spine surgery on Walsh in 2006 at TCH and performed a second spine surgery on Walsh in 2011 at West Chester Hospital. On September 1, 2015, Walsh filed a complaint in the Butler County Court of Common Pleas against TCH, among

¹ West Chester Hospital, LLC, and UC Health were voluntarily dismissed as defendants in the trial court on June 21, 2019.

others, asserting various claims stemming from the surgery. The case was transferred to the Hamilton County Court of Common Pleas on January 18, 2017. TCH subsequently filed a motion to dismiss the complaint, asserting that the claims were time-barred by the statute of repose. The trial court agreed and entered final judgment in favor of TCH on December 31, 2019.

Plaintiff-appellant Rahman Nisbett first met with Durrani in 2007 after experiencing lower back pain. On February 21, 2007, Durrani performed spine surgery on Nisbett at TCH. After the surgery, Nisbett continued to experience the same back pain. On June 6, 2015, Nisbett filed a complaint against TCH, among others, asserting various claims stemming from the surgery. TCH subsequently filed a motion to dismiss the complaint, asserting that the claims were time-barred by the statute of repose. The trial court agreed and entered final judgment in favor of TCH on December 31, 2019.

Plaintiff-appellant Orris Smoote was referred to Durrani in 2009 after experiencing back pain. On August 17, 2009, Durrani performed surgery on Smoote at TCH. After the surgery, Smoote's pain increased dramatically, and he began experiencing limited mobility. On August 19, 2015, Smoote filed a complaint against TCH, among others, asserting various claims stemming from the surgery. TCH subsequently filed a motion to dismiss the complaint, asserting that the claims were time-barred by the statute of repose. The trial court agreed and entered final judgment in favor of TCH on December 31, 2019.

Plaintiffs-appellants now appeal, asserting a sole assignment of error that the trial court erred by granting defendants-appellees' respective dispositive motions. In the first issue presented for review, plaintiffs-appellants assert that the trial court erred by finding that their negligent-credentialing claims against TCH and GSH are

“medical claims” subject to the statute of repose. This court has previously held that negligent-credentialing claims are “medical claims” under R.C. 2505.113(E)(3)(c)(ii) and are therefore subject to the statute of repose. *E.g.*, *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.), *appeal not accepted*, 149 Ohio St.3d 1406, 2017-Ohio-2822, 74 N.E.3d 464; *Crissinger v. Durrani*, 2017-Ohio-9256, 106 N.E.3d 798, ¶ 17 (1st Dist.); *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 19 (1st Dist.), *rev’d on other grounds*, 162 Ohio St.3d, 2020-Ohio-6932, 165 N.E.3d 1268; *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, ¶ 22, *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, ¶ 22. Therefore, we find no error in the trial court’s decision on this issue.

In the second issue presented for review, plaintiffs-appellants assert that the trial court erred by finding 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* at ¶ 24; *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* at ¶ 25; *Janson* at ¶ 24. Therefore, we find no error in the trial court’s decision on this issue.

In the third issue presented for review, plaintiffs-appellants assert that the trial court erred by holding that plaintiffs-appellants’ fraud claims are “medical claims,” and not independent, nonmedical fraud claims. *Janson* at ¶ 31. 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.

In the fourth issue presented for review, plaintiffs-appellants assert that R.C. 2305.19(A), allows their claims against Durrani and CAST to survive beyond the expiration of the 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.

In the final issue presented for review, plaintiffs-appellants assert that the trial court erred by dismissing their spoliation-of-evidence claims. 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*, 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 ¶ 32. Here, all other claims brought by plaintiffs-appellants against defendants-appellees were properly dismissed by the trial court. Therefore, dismissal of the spoliation-of-evidence claims was proper, and we find no error in the trial court's decision on this issue.

Plaintiffs-appellants did not assert any argument that the trial court erred in dismissing their remaining claims against defendants-appellees. Therefore, we find that plaintiff-appellants abandoned any argument regarding their respective remaining claims. *See Janson* at ¶ 33.

For the foregoing reasons, we overrule plaintiffs-appellants' sole assignment of error and affirm the judgments of the trial court.

OHIO FIRST DISTRICT COURT OF APPEALS

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 under App.R. 24.

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

To the clerk:

Enter upon the journal of the court on September 24, 2021,
per order of the court_____.

Administrative Judge