

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

PATRICIA LEGENDRE,	:	APPEAL NO. C-200062
	:	TRIAL NO. A-1505510
and	:	
MICHAEL LEGENDRE,	:	<i>JUDGMENT ENTRY.</i>
	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	
	:	
ABUBAKAR ATIQ DURRANI, M.D., et	:	
al.,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
THE CHRIST HOSPITAL,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, 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 concerns the latest in a long line of cases brought by the former patients of Dr. Abubakar Atiq Durrani and alleging various forms of malpractice, fraud, and negligence against Dr. Durrani, The Christ Hospital and other medical facilities. Following a boating accident, Mrs. Patricia Legendre underwent spinal surgery with Dr. Durrani at The Christ Hospital in May 2007. Unfortunately, Mrs. Legendre's condition continued to worsen. Mrs. Legendre now asserts claims against The Christ Hospital for negligent credentialing, supervision, and retention, fraud, spoliation of evidence, violations of Ohio's Consumer Sales Practices Act and violations of Ohio's Product Liability Act. Mr. Michael Legendre also asserts a claim against The Christ Hospital for loss of consortium. We note that the Legendres also

asserted claims against the other defendants in this case but this appeal involves only the claims filed against The Christ Hospital.

In their single assignment of error, the Legendres contend that the trial court erred in granting The Christ Hospital's Civ.R. 12(B)(6) motion to dismiss. But their claims against the hospital were filed for the first time in Hamilton County on October 14, 2015—more than four years after the date of Mrs. Legendre's surgery and outside the statute of repose set forth under R.C. 2305.113(C). Attempting to circumvent the statute of repose, the Legendres raise four distinct issues under their single assignment of error. Unfortunately for the Legendres, these issues have been squarely considered and rejected by our court in previous Durrani cases.

First, the Legendres contend that their negligent-credentialing claim is a non-medical claim not subject to R.C. 2305.113(C). This argument is squarely foreclosed by *Jonas v. Durrani*, 1st Dist. Hamilton Nos. C-180457 and C-180458, 2020-Ohio-3787, ¶ 10; *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 19 (1st Dist.); and *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.). The Legendres now contend that the Ohio Supreme Court's recent decision in *Evans v. Akron Gen. Med. Ctr.*, Slip Opinion No. 2020-Ohio-5535, conflicts with this prior case law. But we considered and rejected this same argument in *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 20201-Ohio-726, ¶ 19 (holding that *Evans*—which did not address whether a claim of negligent credentialing is a medical claim subject to the statute of repose—does not impact, but rather supports, our holding in *Young* that negligent-credentialing claims are “medical claims” under R.C. 2305.113(E)).

Second, the Legendres maintain that their claims are not “medical claims,” but independent nonmedical fraud claims. This argument was rejected for substantially identical claims in *Jonas* at ¶ 9; *McNeal* at ¶ 18, and *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 18-21 (1st Dist.).

Third, the Legendres urge this court to apply judicial doctrines of fraud and equitable estoppel to create an exception to the statute of repose. We have repeatedly rejected this invitation in the past and do the same here. *See Jonas* at ¶ 11; *Freeman* at ¶ 24. “Where the General Assembly could have included an equitable estoppel or fraud exception (as some states have done), but declined to do so, our job is not to supplant that authority, but rather to apply the statute as written.” *Jonas* at ¶ 11.

Finally, the Legendres argue that the trial court erred in holding that their spoliation-of-evidence claim failed to state a claim against The Christ Hospital. But in order to state a spoliation-of-evidence claim, the Legendres must show (among other elements) that willful destruction of evidence actually disrupted their case. *Simek v. Orthopedic & Neurological Consultants, Inc.*, 10th Dist. Franklin No. 17AP-671, 2019-Ohio-3901, ¶ 99. Here, because all of the Legendres’s other claims are barred as untimely, the trial court was correct to dismiss their spoliation claim as derivative of their other, unsuccessful claims. *See Heimbürger v. Zeal Hotel Group, Ltd.*, 2015-Ohio-3845, 42 N.E.3d 323, ¶ 38 (1st Dist.) (“[S]ummary judgment against a spoliation claimant is appropriate where the evidence alleged to be willfully destroyed, altered, or concealed would not have changed the result of an unsuccessful underlying case, and no other damages are alleged.”).

Because the Legendres filed their complaint against The Christ Hospital more than four years after Mrs. Legendre’s surgery and present no novel argument as to why R.C. 2305.113(C) should not apply, their claims are barred by the statute of repose. The trial court was correct to grant The Christ Hospital’s motion to dismiss, and the Legendres’s single assignment of error is overruled.

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.

OHIO FIRST DISTRICT COURT OF APPEALS

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

To the clerk:

Enter upon the journal of the court on March 24, 2021,
per order of the court _____.
Administrative Judge

