

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

GAYLE BACHMAN,	:	APPEAL NO. C-200110
	:	TRIAL NO. A-1506044
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ABUBAKAR ATIQ DURRANI, M.D., et	:	
al.,	:	
Defendants,	:	
and	:	
THE CHRIST HOSPITAL, INC.,	:	
Defendant-Appellee.	:	

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. Gayle Bachman first visited Dr. Durrani in 2008, seeking treatment for lower back pain. Dr. Durrani recommended surgery to repair her damaged sciatic nerves, which he performed on Ms. Bachman at The Christ Hospital in July 2008. Due to her continued pain, Dr. Durrani recommended another surgery, this time a spinal fusion, which he performed on Ms. Bachman in August 2009 at The Christ Hospital. Following this surgery, Ms. Bachman continued treatment with Dr. Durrani, who eventually performed additional surgeries on Ms. Bachman at other Cincinnati-area medical facilities.

Ms. Bachman now asserts claims against The Christ Hospital for negligence, 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. We note that Ms. Bachman asserted claims against the other defendants in this case but this appeal involves only the claims filed against The Christ Hospital.

In her single assignment of error, Ms. Bachman contends that the trial court erred in granting The Christ Hospital’s Civ.R. 12(B)(6) motion to dismiss. But Ms. Bachman’s claims against The Christ Hospital were filed for the first time on November 6, 2015—more than four years after the date of her last surgery and outside the statute of repose set forth under R.C. 2305.113(C). Attempting to circumvent the statute of repose, Ms. Bachman raises four distinct issues under her assignment of error. Unfortunately for Ms. Bachman, these issues have been squarely considered and rejected by our court in previous Durrani cases.

First, Ms. Bachman argues that her 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.); *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.); and *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, ¶ 19 (reaffirming our holding in *Young* that negligent-credentialing claims are “medical claims” under R.C. 2305.113(E)).

Second, Ms. Bachman maintains that her 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, Ms. Bachman urges 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; *Couch* at ¶ 27. “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, Ms. Bachman argues that the trial court erred in holding that her spoliation-of-evidence claim failed to state a claim against The Christ Hospital. But in order to state a spoliation-of-evidence claim, Ms. Bachman must show (among other elements) that willful destruction of evidence actually disrupted her case. *Simek v. Orthopedic & Neurological Consultants, Inc.*, 10th Dist. Franklin No. 17AP-671, 2019-Ohio-3901, ¶ 99. Here, because all of Ms. Bachman’s other claims are barred as untimely, the trial court was correct to dismiss Ms. Bachman’s spoliation claim as derivative of her other, unsuccessful claims. *See Heimburger 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 Ms. Bachman filed her complaint against The Christ Hospital more than four years after her surgery and presents no novel argument as to why R.C. 2305.113(C) should not apply, her claims are barred by the statute of repose. The trial court was correct to grant The Christ Hospital’s motion to dismiss, and Ms. Bachman’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.

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