IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

JUNIOR MONROE,	:	APPEAL NOS. C-200139 C-200140
NANCY BOWMAN,	:	C-200141
JERRY BOWMAN,	:	TRIAL NOS. A-1806487 A-1706608 A-1503354
and	:	
DAWN MERLAND,	:	*JUDGMENT ENTRY.*
Plaintiffs-Appellants,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants,	:	
and	:	
THE CHRIST HOSPITAL,	:	
Defendant-Appellee.		

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.

These appeals concern 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 Center for Advanced Spine Technologies, Inc., ("CAST") and associated hospitals. This court consolidated the appeals of plaintiffs-appellants Junior Monroe (C-200139), Nancy and Jerry Bowman (C-200140) and Dawn Merland (C-200141). All four plaintiffs-appellants challenge the trial court's grant of defendant-appellee The Christ Hospital's motion to dismiss, asserting the same four issues under a single assignment of error. But we have repeatedly ruled against plaintiffs similarly situated to these appellants on these issues in the past, and we do the same here.

The circumstances under which the plaintiffs-appellants encountered Dr. Durrani and The Christ Hospital vary. Mr. Monroe broke his neck in 2005, and underwent two cervical spine surgeries with Dr. Durrani in 2005 and 2007. Ms. Bowman was referred to Dr. Durrani after experiencing intermittent leg and lower back pain, and underwent surgery with him in 2011 (her husband, Mr. Bowman, asserts a claim for loss of consortium). Ms. Merland experienced back pain for nearly a decade before consulting with Dr. Durrani, and underwent surgery with him in 2009. Plaintiffs-appellants experienced an array of painful and unpleasant symptoms after their surgeries, ranging from loss of motion to broken screws and chronic pain. Nonetheless, all of plaintiffs-appellants' claims have one key factor in common: they were first filed more than four years after plaintiffs-appellants' relevant surgeries. Consequently, the trial court held that the four-year statute of repose in R.C. 2305.113(C) had expired, which barred all of plaintiffs-appellants' claims against The Christ Hospital as untimely.

In the first issue raised by their sole assignment of error, plaintiffs-appellants contend that the trial court erred by holding that their negligent credentialing claims against The Christ Hospital are "medical claims" subject to the statute of repose. This argument is squarely foreclosed by *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.); *Jonas v. Durrani,* 2020-Ohio-3787, 156 N.E.3d 365, ¶ 10 (1st Dist.),

rev'd on other grounds by *Carr v. Durrani*, 2020-Ohio-6943, __ N.E.3d __; and *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 19 (1st Dist.), *rev'd on other grounds* by *Scott v. Durrani*, 2020-Ohio-6932, __ N.E.3d __. We decline the invitation to revisit this settled law.

In the second issue raised by their assignment of error, plaintiffs 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 v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 24 (1st Dist.). "Where the General Assembly could have included an equitable estoppel or fraud exception (as some other 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.

Next, in the third issue raised by their assignment of error, plaintiffs contend that their claims are not "medical claims," but independent nonmedical fraud claims. This argument was rejected for substantially identical claims in *Jonas* at ¶ 9; *Freeman* at ¶ 18-21; and *McNeal* at ¶ 18. Again, we decline the invitation to revisit issues that are well-settled in this district.

Finally, in the fourth issue raised by their assignment of error, plaintiffs argue that the trial court erred in dismissing their spoliation of evidence claims. But in order to state a spoliation of evidence claim, plaintiffs must show (among other elements) that willful destruction of evidence actually disrupted their cases. *Simek v. Orthopedic & Neurological Consultants, Inc.*, 10th Dist. Franklin No. 17AP-671, 2019-Ohio-3901, ¶ 99. Here, because all of plaintiffs' other claims are barred as untimely, the trial court was correct to dismiss their spoliation claims as derivative of their other, unsuccessful claims. *See Heimberger v. Zeal Hotel Group, Ltd.*, 2015-Ohio-3845, 42 N.E.3d 323, ¶ 38 (10th 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.").

Having rejected each of the issues raised by plaintiffs-appellants' sole assignment of error, we accordingly overrule that assignment of error and affirm the judgments of 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 under App.R. 24.

ZAYAS, P.J., MYERS and **BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on April 21, 2021,
per order of the court _____.

Administrative Judge