

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

KELLY HENNESSY,	:	APPEAL NO. C-200145
	:	TRIAL NO. A-1601546
and	:	
STEVE HENNESSY	:	
Plaintiffs-Appellants,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
WEST CHESTER HOSPITAL, LLC,	:	
and	:	
UC HEALTH,	:	
Defendants,	:	
and	:	
THE CHRIST HOSPITAL,	:	
Defendant-Appellee.	:	

KATIE LEHMKUHL,	:	APPEAL NO. C-200146
	:	TRIAL NO. A-1806485
Plaintiff-Appellant,	:	
and	:	
SEAN LEHMKUHL,	:	
Plaintiff,	:	
vs.	:	

OHIO FIRST DISTRICT COURT OF APPEALS

ABUBAKAR ATIQ DURRANI, M.D., :
and :
CENTER FOR ADVANCED SPINE :
TECHNOLOGIES, INC., :
Defendants, :
and :
THE CHRIST HOSPITAL, :
Defendant-Appellee. :

DEREK LIST, : APPEAL NO. C-200147
Plaintiff-Appellant, : TRIAL NO. A-1503024

vs. :

ABUBAKAR ATIQ DURRANI, M.D., :
and :
CENTER FOR ADVANCED SPINE :
TECHNOLOGIES, INC., :
Defendants, :
and :
THE CHRIST HOSPITAL, :
Defendant-Appellee. :

MAGGIE KNAUER, Executor for the : APPEAL NO. C-200148
Estate of CHRISTOPHER KNAUER, : TRIAL NO. A-1504787

Plaintiff-Appellant, :

vs. :

ABUBAKAR ATIQ DURRANI, M.D., :
and :

JUDGMENT ENTRY.

CHILDREN'S HOSPITAL MEDICAL
CENTER, :

Defendants, :

and :

THE CHRIST HOSPITAL, :

Defendant-Appellee. :

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 four consolidated appeals are several in the long line of cases filed against defendant Abubakar Atiq Durrani, M.D., and defendant-appellee The Christ Hospital ("TCH") stemming from the alleged malpractice of Dr. Durrani.

Plaintiffs-appellants Kelly and Steve Hennessy, Katie Lehmkuhl, Derek List, and Maggie Knauer, as the executor of the estate of Christopher Knauer, separately filed complaints against Durrani, TCH, and other associated entities. The claims asserted against TCH included, as relevant to these appeals, negligent credentialing, supervision, and retention, fraud, and spoliation of evidence. Because all of the appellants' claims were filed more than four years after the underlying surgeries by Dr. Durrani, the trial court determined that all medical claims in the complaints were barred by the statute of repose. It further determined that appellants' claims for spoliation of evidence could not proceed where all of the claims that form the basis of the suits were barred by the statute of repose, and it granted TCH's motions to dismiss the complaints.

In a single assignment of error, appellants argue that the trial court committed reversible error by granting TCH's motions to dismiss and dismissing appellants' negligent credentialing and fraud claims.

In this assignment of error, appellants present four separate issues for review. They first contend that the trial court erred in determining that appellants' claims for negligent credentialing against TCH were "medical claims" under R.C. 2305.113(E)(3) and were subject to the four-year statute of repose set forth in R.C. 2305.113(C). Appellants concede that our precedent has held that negligent-credentialing claims are "medical claims" under R.C. 2305.113(E)(3). See *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.); *Crissinger v. Christ Hosp.*, 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*, *Scott v. Durrani*, 162 Ohio St.3d 507, 2020-Ohio-6932, 165 N.E.3d 1268; *Jonas v. Durrani*, 2020-Ohio-3787, 156 N.E.3d 365, ¶ 10 (1st Dist.), *rev'd on other grounds*, *Carr v. Durrani*, 163 Ohio St.3d 207, 2020-Ohio-6943, 168 N.E.3d 1188; *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726. We decline appellants' invitation to revisit this issue.

In their second issue presented for review, appellants ask this court to recognize both fraud and equitable estoppel exceptions to the statute of repose. We have repeatedly declined to recognize such exceptions to the statute of repose, and continue to do so in these cases. See *Crissinger* at ¶ 24; *Jonas* at ¶ 11; *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 24 (1st Dist.).

In their third issue presented for review, appellants argue that the trial court erred in determining that their fraud claims were "medical claims" and not independent nonmedical fraud claims that are not subject to the medical malpractice statute of repose. We have previously rejected this argument for substantially

similar claims. *Freeman* at ¶ 18-21; *McNeal* at ¶ 18. We again decline appellant's invitation to revisit these well-settled issues.

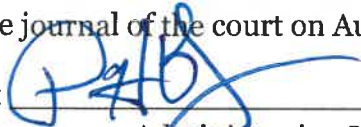
Finally, in their fourth issue presented for review, appellants argue that the trial court erred in dismissing their claims for spoliation of evidence. But because all other claims asserted against TCH in the appellants' complaints were properly dismissed, the appellants "would be unable to prove disruption of their respective cases and their spoliation-of-evidence claims would inevitably fail." *See Janson v. Christ Hosp.*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, ¶ 32. The trial court therefore did not err in dismissing the claims for spoliation of evidence.

Having rejected each of the issues raised by appellants, we overrule their sole 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.

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

To the clerk:

Enter upon the journal of the court on August 20, 2021,
per order of the court  _____
Administrative Judge