

[Cite as *Prysock v. Ohio State Univ. Med. Ctr.*, 2001-Ohio-1849.]

IN THE COURT OF CLAIMS OF OHIO

TAKEISHA PRY SOCK :
:

Plaintiff : CASE NO. 2001-01167
:

v. : ENTRY GRANTING DEFENDANT'S
: MOTION FOR SUMMARY JUDGMENT
:

THE OHIO STATE UNIVERSITY :
MEDICAL CENTER :
:
:

Defendant :

Plaintiff filed her complaint in this matter on January 5, 2001. On June 6, 2001, defendant filed a motion for summary judgment. On August 1, 2001, plaintiff filed a memorandum contra defendant's motion. On August 14, 2001, defendant filed a supplemental memorandum in support of its motion. This matter is now before the court for a non-oral hearing on defendant's motion for summary judgment.

Civ.R. 56(C) states, in part, as follows:

*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against

whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***

See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

Plaintiff alleges that defendant is liable on the following causes of action arising from plaintiff's hospitalization in January 1999: negligence, negligent infliction of emotional distress, fraud/fraudulent concealment, and breach of contract. Defendant argues that plaintiff has failed to comply with R.C. 2305.11(B)(1), the applicable one-year statute of limitations for medical malpractice claims.

On January 12, 1999, plaintiff underwent a Caesarean section delivery at defendant's medical facility. During the procedure, the medical team allegedly left a surgical sponge in plaintiff's abdomen. On January 22, 1999, plaintiff underwent a second surgical procedure to remove the sponge. Plaintiff asserts that her cause of action did not accrue until March 11, 2000, the date on which she discovered through an examination of her medical records that the sponge had been left inside her body. Plaintiff further maintains that her fraud claim is subject to a six-year statute of limitations in accordance with R.C. 2305.11(B).

R.C. 2743.16(A) states:

Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause

of action or within any shorter period that
is applicable to similar suits between
private parties.

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R.C. 2305.11(B)(1) states:

Subject to division (B)(2) of this section, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued, except that, if prior to the expiration of that one-year period, a claimant who allegedly possesses a medical, dental, optometric, or chiropractic claim gives to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given.

To determine which statute of limitations applies, the court must first determine the true nature or subject matter of the acts giving rise to the complaint, rather than the form in which the action is pleaded. *Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, citing *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179. Although plaintiff seeks recovery under the theories of fraud and breach of contract, in addition to negligence, the court finds that the essential character of plaintiff's claims is medical negligence. Therefore, the court finds that plaintiff's claims are subject to the one-year statute of limitations defined in R.C. 2305.11.

Plaintiff's cause of action accrued when plaintiff became aware, or should have become aware, of the extent and seriousness of her condition. *Hershberger v. Akron City Hosp.* (1987), 34 Ohio St.3d 1. The court finds that plaintiff should have become aware of the seriousness of her condition on January 22, 1999, when she underwent a second surgical procedure to remove the

sponge. Inasmuch as plaintiff's complaint should have been filed no later than one year after January 22, 1999, the court finds that plaintiff failed to comply with the provisions of R.C. 2305.11.

For the foregoing reasons, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JUDGE

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