



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, 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.

{¶4} Plaintiff alleges that, after defendant provided medical care during the birth of her daughter, a "doctor/employee of the defendant negligently left cotton swabs and/or gauze" in her body. See Plaintiffs' Complaint Paragraph 4. In its motion for summary judgment, defendant contends that even though plaintiff's claim was tolled pursuant to R.C. 2305.16 until she turned 18 years of age, her claim is timed barred under R.C. 2305.11.

{¶5} Generally, the applicable statute of limitations for civil cases in the Court of Claims is two years. R.C. 2743.16(A) provides, "[C]ivil 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." However, R.C. 2305.11(B)(1) provides that, "an action upon a medical \*\*\* claim shall be commenced within

one year after the cause of action accrued \*\*\*." A "medical claim" is defined as "any claim that is asserted in any civil action against a physician, podiatrist, or hospital, against any employee or agent of a physician, podiatrist, or hospital, or against a registered nurse \*\*\* and that arises out of the medical diagnosis, care or treatment of any person." R.C. 2305.11(D)(3).

{¶6} Plaintiff insists that the one-year statute of limitations does not apply because her claim is one for negligence. Thus, the issue is whether plaintiff's claim is one for negligence or medical malpractice.

{¶7} When attempting to determine the applicable statute of limitations, a court "must look to the actual nature or subject matter of the case, rather than to the form of pleading. The grounds for bringing the action are the determinative factors, the form is immaterial." *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183. See, also, *Prysock v. Ohio State University Med. Ctr.*, 2001-Ohio-1849. In *Prysock*, plaintiff filed a complaint alleging negligence and intentional infliction of emotional distress against defendant/hospital for allegedly failing to remove a sponge from her body after giving birth to twins. This court granted summary judgment in favor of defendant, finding that the essential character of plaintiff's allegation was for medical malpractice. *Id.* at 2. The court further noted that "[i]t is well-settled that the misconduct of medical professionals

constitutes malpractice regardless of whether such misconduct is framed in terms of negligence or breach of contract." *Id.* On appeal, the Tenth District Court of Appeals affirmed, with the exception that plaintiff's fraud claim was deemed separate from her medical claims and was remanded for further proceedings. *Prysock v. Ohio State Univ. Med. Ctr.*, Franklin App. No. 01AP-1131, 2202-Ohio-2811.

{¶8} Plaintiff's claim, regardless of the fact that she plead it as one for negligence, is actually a medical claim. This action arises from a medical professional's failure to remove a foreign object from plaintiff's body cavity. This claim clearly relates to the medical care or treatment of plaintiff, and as such, the claim is one for medical malpractice. See R.C. 2305.11(D)(3). The applicable statute of limitations for medical malpractice claims is one year. See R.C. 2305.11(B)(1).

{¶9} Although plaintiff discovered the cotton or gauze swab no later than July 27, 1997, the date she was discharged from the hospital after having the foreign object removed, plaintiff was still a minor at that time. As a minor, the statute of limitations is tolled until the age of majority. See *Vance v. Saint Vincent Hospital*, 64 Ohio St.2d 36; R.C. 2305.16.

{¶10} Plaintiff turned eighteen on August 20, 1999, the age of majority. Pursuant to R.C. 2305.16, plaintiff had until August 20,

2000, to file her claim. Plaintiff did not file her claim until August 16, 2001, almost one year after her cause of action expired.

Accordingly, her claim was untimely filed and is barred by the statute of limitations.

{¶11} For the foregoing reasons, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant.

---

JUDGE

Entry cc:

Stanlee E. Culbreath  
90 N. Nelson Road  
Columbus, Ohio 43219

Attorney for Plaintiffs

Karl W. Schedler  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Assistant Attorney General

AG/cmd  
Filed 7-11-2002  
Jr. Vol. 711, Pg. 146  
To S.C. reporter 8-12-2002