

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LINDA L. HANS, Individ., etc.

Case No. 2001-10140

Plaintiff

Judge J. Craig Wright

v.

DECISION

OHIO STATE UNIVERSITY MEDICAL
CENTER

Defendant

{¶1} On October 13, 2006, an oral hearing was held on defendant's November 2, 2005, motion for reconsideration of the court's August 23, 2004, entry denying summary judgment. At the conclusion of oral arguments, the court announced its decision to grant defendant's motion and directed defendant's counsel to submit proposed general findings to that effect. The court hereby issues the following determination.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} **** 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff, Linda Hans, filed her complaint on October 15, 2001, alleging claims

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of medical malpractice and wrongful death as a result of the treatment rendered to plaintiff's decedent, Calvin Hans, who underwent surgery and chemotherapy at The Ohio State University Medical Center (OSUMC) in 1997. Calvin Hans died on July 20, 1997. Defendant maintains that plaintiff's claims are barred by the applicable statute of limitations set forth in R.C. 2305.11(B)(1)¹ and in R.C. 2125.02.² According to defendant, plaintiff timely filed her first complaint in the Franklin County Court of Common Pleas on September 11, 1998, naming Dr. Schirmer as defendant and alleging claims of medical negligence and wrongful death arising from the care and treatment of Calvin Hans. The case was voluntarily dismissed by plaintiff on July 26, 1999, after the statute of limitations had run on both causes of action. It is undisputed that plaintiff filed a second complaint in the court of common pleas on October 8, 1998, alleging medical negligence and wrongful death against different defendants, to include Dr. Stanek and several John Doe physicians who provided medical care to plaintiff's decedent.³ The second complaint was voluntarily dismissed by plaintiff on September 6, 2000, and then refiled on August 22, 2001, pursuant to R.C. 2305.19, the savings statute. The instant case was filed on October 15, 2001, and

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R.C. 2305.11 (B)(1) states that "**** an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrues, 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."

2

R.C. 2125.02 (D)(1) states that "**** an action for wrongful death shall be commenced within two years after the decedent's death."

3

Plaintiff served Dr. Stanek on February 18, 1998, with notice of her intent to sue him for medical negligence. Dr. Stanek and plaintiff agreed to further extend the time to file the lawsuit until October 14, 1998.

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plaintiff once again alleged both medical negligence by Dr. Schirmer as well as by other John Doe employees of defendant and a claim for wrongful death.

{¶5} Plaintiff contends that her expert oncologist, Dr. Spiridonidis, rendered his opinion in the spring of 2001 that the medical care provided by OSUMC employees, including Dr. Schirmer, constituted negligence. Plaintiff argues that her filing in the Court of Claims is timely because she filed the complaint within one year of discovering the alleged malpractice. Defendant maintains that plaintiff's cause of action accrued upon the occurrence of a 'cognizable event' which was the death of plaintiff's decedent in 1997.

{¶6} The statute of limitations for commencing actions in this court, R.C. 2743.16(A), provides that "**** 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 the accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." The Tenth District Court of Appeals has held that R.C. 2743.16(A) applies to all actions against the state in this court and that the statute takes precedence over all other statutes of limitations provisions in the Ohio Revised Code. *Talmon v. Ohio State Lottery Commission* (Oct. 6, 1992), Franklin App. No. 92AP-693.

{¶7} The Supreme Court of Ohio developed a three-part test to determine the date that a medical malpractice claim accrues under R.C. 2305.11(A). The court held that "the trial court must look to the facts of the particular case and make the following determinations: when the injured party became aware, or should have become aware, of the extent and seriousness of his condition, which, of course, may occur without the necessity of further medical consultation; whether the injured party was aware, or should have been aware, that such condition was related to a specific professional medical service previously rendered him; and whether such condition would put a reasonable person on notice of need for further inquiry as to the cause of such condition." *Hershberger v. Akron City Hospital* (1987), 34 Ohio St.3d 1, 5-6.

{¶8} In *Allenius v. Thomas* (1989), 42 Ohio St.3d 131, 133, the court explained

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that in each instance there must be “an occurrence of a ‘cognizable event’ which does or should lead the patient to believe that the condition of which the patient complains is related to a medical procedure, treatment or diagnosis previously rendered to the patient and where the cognizable event *does or should* place the patient on notice of the need to pursue his possible remedies.” (Emphasis added.) Finally, the court emphasized that once the cognizable event occurs, plaintiff has a duty to investigate whether the injury resulted from malpractice and to identify the alleged negligent practitioners. *Flowers v. Walker* (1992), 63 Ohio St.3d 546. “Once a patient becomes aware of an injury, it is incumbent on that individual to investigate his or her case completely.” *Koerber v. Cuyahoga Falls General Hospital*, Summit App. No. 20516, 2001-Ohio-1365.

{¶9} In this case, the court declines to adopt plaintiff’s argument that her complaint is timely filed inasmuch as plaintiff filed it within one year of discovering the alleged negligence by defendant’s employees. Indeed, the court finds that as early as March 16, 1998, plaintiff either knew or suspected that Calvin Hans was injured as a result of medical malpractice inasmuch as she served Dr. Schirmer with notice that she was considering filing a medical negligence claim against him. The court also finds that the cognizable event that triggered the accrual of plaintiff’s cause of action was the death of Calvin Hans on July 20, 1997. As such, plaintiff had one year from that date both to thoroughly and completely investigate the circumstances relating to the medical care that Calvin Hans had received and to file a medical malpractice action. The cause of action for wrongful death also accrued on July 20, 1997, and plaintiff therefore had two years from that date to file any wrongful death claims.

{¶10} It is well-settled law that prior to the entry of final judgment in a case, the court retains jurisdiction to reconsider interlocutory orders. See *Pitts v. Ohio Dep’t of Transp.* (1981), 67 Ohio St.2d 378, *Latronica v. Western Southern Life, Inc.*, Mahoning App. No. 04 MA 227, 2005-Ohio-2935, at ¶26.

{¶11} Upon review of the oral arguments of counsel and the memoranda filed by

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the parties, the court concludes that plaintiff's claims are barred by the statute of limitations. Therefore, defendant's motion for reconsideration is GRANTED. Upon reconsideration, and construing the evidence most strongly in plaintiff's favor, defendant's motion for summary judgment shall be granted and accordingly, judgment shall be rendered in favor of defendant.



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v.

JUDGMENT ENTRY

OHIO STATE UNIVERSITY MEDICAL
 CENTER

Defendant

An oral hearing was conducted upon defendant's motion for reconsideration. For the reasons set forth in the decision filed concurrently herewith, defendant's motion is GRANTED and the portion of the August 23, 2004, entry denying defendant's motion for summary judgment is hereby VACATED. 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.

J. CRAIG WRIGHT
 Judge

cc:

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