[Cite as *Adams v. Van Wert Cty. Hosp.*, 2005-Ohio-3078.]

COURT OF APPEALS
THIRD APPELLATE DISTRICT
VAN WERT COUNTY

THRESSA ADAMS, ET AL. **CASE NUMBER 15-05-01**

PLAINTIFFS-APPELLANTS

v. **O P I N I O N**

VAN WERT COUNTY HOSPITAL, ET AL.

DEFENDANTS-APPELLEES

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: June 20, 2005

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Shaw, J.

{¶1} The plaintiffs-appellants, Thressa Adams, Tim Adams, Brandon Adams, and Andrew Adams, appeal the judgment of the Van Wert County Court of Common Pleas granting summary judgment in favor of the defendants-appellees, Jeffrey A. Easley, M.D. and Family Medical Associates, Inc. (hereinafter "FMA").

{¶2} On June 5, 2000, Thressa had an appointment with her family physician, Dr. Easley, a physician practicing with FMA, to have a hard nodule in her left breast examined. Dr. Easley noted that Thressa experienced considerable tenderness when her left nipple was palpated and recommended that Thressa undergo a mammogram and an ultrasound at Van Wert County Hospital. Thressa complied.

{¶3} Seetaram Ravipati, M.D., a radiologist working for West Ohio X-Ray and who often worked with Dr. Easley, read the results of Thressa's mammogram and ultrasound and concluded that Thressa had a discernable mass in

the upper left outer quadrant of her left breast. There were no abnormalities around the left nipple. The results were forwarded to Dr. Easley.

{¶4} On July 14, 2000, Thressa again returned to Dr. Easley's office. According to Thressa, Dr. Easley treated a recurring inguinal abscess and also discussed the results of the mammogram and ultrasound. Thressa stated that Dr. Easley assured her that "he was 99.9% certain that it was nothing to worry about." On the other hand, Dr. Easley maintains that there was no discussion about Thressa's breast or any of the test results.

{¶5} On September 14, 2001 Thressa visited Dr. Easley complaining about additional pain in her left breast. Again, Dr. Easley ordered Thressa to have a mammogram, and she complied. This mammogram was completed by Dr. Jelinger, a partner of Dr. Ravipati. Dr. Jelinger subsequently diagnosed Thressa with a category 4 suspicious abnormality in her breast, and Thressa underwent a biopsy. The biopsy revealed that Thressa had breast cancer.

{¶6} On November 6, 2001, Thressa met with Dr. Easley to discuss referrals for her cancer treatment. At this consultation, Thressa asked whether she always had cancer and "who let the ball drop." Thressa stated she was very upset at this appointment and was concerned whether she would be able to trust anyone again. Nevertheless, Dr. Eaton referred Thressa to Dr. Mantravadi at Radiation

Oncology Associates in Fort Wayne, Indiana and other specialists at the Indiana University Medical Center.

{¶7} Soon thereafter, Thressa met with Dr. Mantravadi and a mastectomy was performed. Dr. Mantravadi sent a total of thirteen letters to Dr. Eaton to update him on Thressa's status during her cancer treatment, but Dr. Easley never responded to them. In the final letter, Dr. Mantravadi thanked Dr. Easley "for allowing [his medical team] to participate in the management of Mrs. Adams." Dr. Easley acknowledged that Dr. Mantravadi's letters were sent to him in his capacity as Thressa's primary care physician and included the correspondences in Thressa's medical chart.

{¶8} After the November 6, 2001 cancer referral meeting, Dr. Easley did not talk to Thressa until May 3, 2003. Between November 2001 and May 2003, however, Thressa did meet other doctors at FMA for treatment of medical conditions unrelated to the cancer treatment. At all those visits, Dr. Easley was listed as her primary care physician. Eventually, Dr. Easley treated Thressa on May 3, 2003 for a problem associated with a leg cast due to a broken fibula. At that visit, Thressa and Dr. Easley did not discuss anything about her breast cancer treatment or prognosis.

{¶9} On September 2, 2003 Thressa, Tim, Brandon, and Andrew filed suit against Dr. Easley, FMA, Van Wert County Hospital, Seetaram Ravipati, and

West Ohio X-Ray alleging negligence and loss of consortium. Eventually, all claims were dismissed in this case except for those pending against Dr. Easley and FMA. On September 20, 2004, Dr. Easley and FMA filed a motion for summary judgment claiming that the Adams' lawsuit is time barred by the statute of limitations. The Adams filed a motion opposing summary judgment on October 22, 2004. The trial court granted Dr. Easley's and FMA's motion for summary judgment and dismissed the case. The Adams appeal alleging one assignment of error.

THE TRIAL COURT ERRED, AS A MATTER OF LAW, BY GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT-APPELLEES UPON THE STATUTE OF LIMITATIONS DEFENSE.

Standard of Review

{¶10} The standard for review of a grant of summary judgment is one of de novo review. *Lorain Nat'l Bank v. Saratoga Apts*. (1989), 61 Ohio St.3d 127, 129, 572 N.E.2d 198. Thus, such a grant will be affirmed only where there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). In addition, "summary judgment shall not be rendered unless it appears…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, such party being entitled to have the evidence construed most strongly in his favor." *Id*.

{¶11} The moving party may make his motion for summary judgment in his favor "with or without supporting affidavits[.]" CivR. 56(B). However, "[a] party seeking summary judgment must specifically delineate the basis upon which summary judgment is sought in order to allow the opposing party a meaningful opportunity to respond." *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 526 N.E.2d 798, syllabus. Summary judgment should be granted with caution, with a court construing all evidence and deciding any doubt in favor of the nonmovant. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 360, 604 N.E.2d 138. Once the moving party demonstrates that he is entitled to summary judgment, the burden then shifts to the non-moving party to show why summary judgment in favor of the moving party should not be had. See Civ.R. 56(E). In fact, "[i]f he does not so respond, summary judgment, if appropriate, shall be rendered against him." *Id.*

Statute of Limitations

{¶12} At the outset, it should be noted that the trial court and the defendants-appellees cite R.C. 2305.113 as the controlling statute governing the statute of limitations in a medical malpractice action. Contrarily, the Adams cite R.C. 2305.11 as controlling in this case. A review of the statutes reveal that both versions of statute are nearly identical in language relevant to this case, and state that a cause of action for a medical claim "shall be commenced within one year

after the cause of action accrued." Accordingly, because the alleged malpractice in the instant case occurred approximately on or before November 6, 2001, the application of R.C. 2305.11 will govern this case.

{¶13} R.C. 2305.11(B)(1) states, in relevant part:

> **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…."**

{¶14} In *Frysinger v. Leech* (1987), 32 Ohio St.3d 38, 512 N.E.2d 337, at paragraph one of the syllabus, the Ohio Supreme Court opined:

> **Under R.C. 2305.11…a cause of action for medical malpractice accrues and the one-year statute of limitations commences to run (a) when the patient discovers or, in the exercise of due diligence should have discovered, the resulting injury, or (b) when the physician-patient relationship for that condition terminates, whichever occurs later**.

{¶15} In *Wells v. Johenning* (1986), 63 Ohio App.3d 364, 367, 578 N.E.2d 878 (citations omitted), the Eighth District Court of Appeals, citing other appellate decisions, summarily stated:

> **[T]he precise point at which the physician-patient relationship terminates will be the point where the patient refuses to submit to further treatment by the physician, or at a point at which either party takes affirmative steps to terminate the relationship. Absent such action, the relationship is terminated by the patient's failure to keep the next scheduled appointment.**

{¶16} In the instant case, Dr. Easley and FMA argue that the physician-patient relationship ended on November 6, 2001. Specifically, the defendants-

appellees argue Dr. Easley stopped treating Thressa for her breast cancer on November 6, 2001, which subsequently barred suit for any claim arising out of the breast cancer treatment on November 6, 2002. On the other hand, the Adams contend that there is no evidence that the physician-patient relationship ended.

{¶17} In *Rickman v. Marin* (Aug. 28, 1998), 6th Dist. No. L-98-1036, 1998 WL 568053, the patient sued her gynecologist for failure to diagnose breast cancer. In June 1995, the gynecologist noticed a mass on the patients left breast, so the gynecologist referred the patient to a specialist. Id. at *1. The specialist diagnosed the patient with breast cancer and performed a mastectomy. Id. During and after the operation, patient continued to consult with her gynecologist on other gynecological matters. The gynecologist also performed follow-up examinations concerning her cancer treatment as well as examinations for cancer in her right breast. Id. During that same time, patient also followed up with the specialist, and the specialist continually notified the gynecologist of the patient's recovery until November 1996 when the patient consulted with the gynecologist for the last time. Id.

{¶18} In January 1997, patient filed suit against the gynecologist alleging that the gynecologist was negligent in diagnosing the breast cancer. The gynecologist moved for summary judgment alleging that patient's suit was not within the one year statute of limitations. Id. The trial court granted the

gynecologist's motion for summary judgment, but the court of appeals reversed stating:

> **In rendering its decision, the trial court relied on *Findlay v. Rubin* (Dec. 29, 1995), Montgomery App. No. 15315, unreported. Findlay was a patient of dentist Rubin who in 1989 crowned two of Findlay's teeth. The crowns became detached and the teeth decayed. Rubin treated Findlay for this condition until December 1992. The following month he left the practice and another dentist in his group took over. In June 1993, the second dentist told Findlay that Rubin had been negligent in attaching the crowns and referred her to an oral surgeon for extraction. Findlay continued to see the second dentist in Rubin's former group until December 1993. In August 1994, eighteen months after she had last seen Dr. Rubin, and over a year after she had been referred to the oral surgeon, Findlay sued. The trial court granted the dentists summary judgment and the court of appeals affirmed, concluding that Findlay's treatment for the condition caused by the alleged negligence ended when she was referred to an oral surgeon—more than a year before bringing suit.**
>
> **We are not persuaded that *Findlay* is a proper application of the *Frysinger* syllabus rule. Even so, what we now decide does not conflict with *Findlay* because that case is factually distinguishable from the present matter. Specifically, in *Findlay*, there was no evidence that the defendant dentist group ever provided Findlay *with any follow-up treatment* for the teeth affected by the problem crowns after Findlay was referred to an oral surgeon. In the present matter, appellant avers that appellee received reports from the specialist and *performed follow-up care*. This averment is sufficient to create a question of fact on the issue.**
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> **Furthermore, relying on *Findlay*, appellee would like us to narrowly define the condition for which appellant was treated: that being cancer of the left breast. We are not willing to do this. Cancer is not tooth decay. It cannot be neatly confined as tooth decay to one or two teeth and affect no others. Cancer can and frequently does metastasize, and we can draw no other**

> **conclusion than appellee' examination of appellant's right breast and other efforts of vigilance against metastases *constituted continuing care and treatment for the condition of which negligence was alleged*—that being, the finding and diagnosing of cancer.**

Id. at *2 (emphasis added).

{¶19} Like *Rickman*, the instant case involves the alleged misdiagnosis of breast cancer. In the case before us, Dr. Easley allegedly failed to diagnosis Thressa with cancer of the left breast but, when eventually diagnosed, he referred Thressa to a cancer specialist, Dr. Mantravadi at Radiation Oncology Associates in Fort Wayne, Indiana. Again, like *Rickman*, Dr. Mantravadi treated Thressa for her cancer and regularly updated Dr. Easley on Thressa's recovery and progress. Contrary to the facts stated in *Rickman*, however, the record indicates that Dr. Easley never continued with follow-up care regarding the cancer in her left breast or any other possibility of cancer in her body. In fact, according to the evidence, Dr. Easley did not meet or see Thressa until almost two years later when he treated her for a separate medical condition.

{¶20} Because Dr. Easley surrendered supervision to the specialist in Indiana, which included all direct or follow-up care for the treatment of Thressa's breast cancer after their November 6, 2001 meeting, we hold, as a matter of law that Thressa's complaint was filed untimely pursuant to R.C. 2305.11. C.f. Id.

{¶21} In sum, the lack of follow-up care concerning the cancer or any treatment concerning the cancer terminated the physician-patient relationship *for that condition*—the condition being breast cancer—on November 6, 2001. See *Frysinger*, 32 Ohio St.3d 38, at paragraph one of the syllabus. Accordingly, the Adams had one year from that date to file suit. Because the Adams did not file suit until September 2, 2003, their assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

CUPP, P.J., and BRYANT, J., concur.

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