

IN THE COURT OF CLAIMS OF OHIO

FRANCES B. SIEGEL, Admr., etc., et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI
COLLEGE OF MEDICINE

Defendant

Case No. 2009-09531JD

Judge Lisa L. Sadler
Magistrate Holly True Shaver

DECISION

{¶1} Pursuant to Civ.R. 53(D)(3)(b), Plaintiffs filed Objections to the Magistrate’s September 4, 2024 decision where the Magistrate determined that not only did Plaintiffs fail to prove their claims for fraud and spoliation of evidence, but both claims were barred by the statute of limitations. Defendant filed a brief response in opposition and Plaintiffs filed a reply.

Standard of Review

{¶2} “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision” Civ.R. 53(D)(3)(b)(i). Objections “shall be specific and state with particularity all grounds for objection.” Civ.R. 53(D)(3)(b)(ii). “An objection to a factual finding, whether or not specifically designated as a finding of fact . . . shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding” Civ.R. 53(D)(3)(b)(iii).

{¶3} The court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and conclusions in the magistrate’s decision.” (Internal citations omitted.) *Ramsey v. Ramsey*, 2014-Ohio-1921, ¶ 17 (10th Dist.). “Whether or not objections are timely filed, a court

may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b).

Factual Background¹

{¶4} The facts in the present matter are tragic and involve the unfortunate death of Plaintiffs' daughter, Jessica Siegel. At nine years old, Jessica was diagnosed with arteriovenous malformation (AVM) after suffering a series of severe headaches and light sensitivity. (Trial Transcript, p. 60.) Jessica was initially treated at Cincinnati Children's Hospital by Dr. John Myseros and by the age of fifteen had successfully undergone three embolization operations and one radiosurgery with Dr. Myseros. *Id.* at p. 62. Moving his practice out-of-state, Dr. Myseros referred Jessica to Dr. Andrew Ringer for continued treatment. *Id.*

{¶5} Jessica first met with Dr. Ringer in March 2006 and a staged embolization operation was scheduled for July 2006 at Good Samaritan Hospital in Cincinnati, Ohio. (Plaintiffs' Exhibit 55.) In July 2006, Jessica underwent her first embolization surgery with Dr. Ringer. (Plaintiffs' Exhibit 4A.) During the embolization procedure, an AVM pedicle brand perforation occurred, but was asymptomatic and the procedure was otherwise successful. (Plaintiffs' Exhibit 15.) Dr. Ringer informed Plaintiffs that the first procedure was successful in resolving roughly 20 percent of the veins in question, but that another embolization procedure needed to be performed in four weeks. (Trial Transcript, p. 545.) The second embolization procedure was scheduled for August 14, 2006. *Id.*

{¶6} During the August 14, 2006 embolization procedure, two complications occurred. (Defendant's Exhibit A, p. 423-427.) First, a vein or artery was believed to have been perforated as there was an extravasation of contrast dye. *Id.* at p. 425. Second, there was a "filling defect" in the right middle cerebral artery, which appeared to have been caused by the glue entering an artery which was not intended for embolization. *Id.*; see also (Defendant's Exhibit A, p. 423-427). Due to the increased potential of a

¹ The Magistrate laid out a meticulously detailed procedural and factual history in her September 4, 2024, decision. This case encompasses a complex medical history with a procedural history spanning over fifteen years. For the full summarization and history see the Magistrate's September 4, 2024, decision. (Magistrate's Decision, p. 1-44.)

blood clot occurring, Dr. Ringer administered a blood thinner and informed Plaintiffs that there had been complications during the procedure, but that everything was fine. (Trial Transcript, p. 548). While recovering that evening, Jessica suffered a sudden headache and stroke. *Id.* at p. 78. To prevent further harm, Jessica was placed in a medically induced coma. *Id.*

{¶7} CT scans taken on August 15, 2006, showed a hematoma had developed and was increasing in size. *Id.* at p. 551. A catheter was placed in Jessica's skull to relieve the building pressure. *Id.* Plaintiffs were informed of the hematoma and of Jessica's condition. *Id.* at p. 78. Intercranial pressure continued to increase over the following days, and on August 18, 2006, Dr. Ringer performed a craniectomy. *Id.* at p. 81. On August 23, 2006, Dr. Bradley Bobbit performed a tracheostomy to provide continued airway support to Jessica. *Id.* at p. 199-200. Hours after the tracheostomy, Jessica's temperature spiked to 108 degrees Fahrenheit, and Jessica entered a code blue.² *Id.* at p. 78-82. Tragically, Jessica died on August 23, 2006. *Id.*

Procedural History

{¶8} Plaintiffs filed lawsuits in 2008 and 2009 in the Hamilton County Court of Common Pleas related to Jessica's death and the unsanctioned harvesting of Jessica's eyes. See *Siegel, et al. v. LifeCenter Organ Donor Network, et al.*, Hamilton C.P. No. A0802827 (Mar. 20, 2008).

{¶9} On December 16, 2009, Plaintiffs filed the present case in the Ohio Court of Claims (Court). This Court stayed the present case pending the connected action in Hamilton County Court of Common Pleas but allowed an evidentiary hearing to proceed to determine whether Dr. Ringer was entitled to civil immunity. (Entry, Dated Oct. 6, 2010.) In May 2013, the Court assigned Magistrate Holly Shaver to this case to conduct an evidentiary hearing on the civil immunity of Dr. Ringer. On May 15, 2013, the Magistrate conducted an evidentiary hearing to determine whether Dr. Ringer was entitled to civil immunity. The Magistrate recommended that Dr. Ringer was entitled to personal

² In Ohio, code blue is part of the hospital emergency code system and indicates that a patient has gone into cardiac or respiratory arrest. Cleveland Clinic, *Code Blue Hospital*, <https://my.clevelandclinic.org/health/articles/23532-code-blue-hospital> (accessed Nov. 21, 2024).

immunity pursuant to R.C. 9.86 and 2743.02(F), as he did not act in a willful, wanton, or reckless manner during his care and treatment of Jessica. (Magistrate Decision, Dated Nov. 5, 2013). Plaintiffs filed objections to the Magistrate's decision on November 18, 2013. This Court affirmed the Magistrate's decision and adopted it as its own. (Entry, Dated Mar. 12, 2014).

{¶10} On April 3, 2014, Plaintiffs appealed this Court's decision. The Court's immunity determination was upheld by the Tenth District Court of Appeals, and the Supreme Court of Ohio declined to accept jurisdiction. *Siegel v. State*, 2015-Ohio-441 (10th Dist.); see also *Siegel v. State*, 2015-Ohio-5468, *appeal not accepted*. ("Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4)"). On March 9, 2016, the Ohio Supreme Court denied Plaintiffs' motion for reconsideration.

{¶11} The proceedings in Hamilton County Court of Common Pleas held that Plaintiffs' claims were barred by the applicable statute of limitations and/or res judicata as Plaintiffs had failed to timely file their medical malpractice, wrongful death, and breach of contract claims. This decision was upheld by the First District Court of Appeals. *Siegel v. Ringer*, 2017-Ohio-6969, ¶ 27-33 (1st Dist.). With the connected action in Hamilton County Court of Common Pleas resolved, this Court's October 6, 2010 stay order was lifted and the case set for trial. (Order Vacating Stay of Proceedings, Dated July 3, 2018).

{¶12} On October 4, 2018, Defendant filed a motion for summary judgment. On May 1, 2019, this Court granted summary judgment in Defendant's favor, finding that Plaintiffs' claims were barred by the applicable statute of limitations. On May 28, 2019, Plaintiffs appealed this Court's decision to the Tenth District Court of Appeals.

{¶13} The Tenth District Court of Appeals affirmed this Court's decision in part, finding that Plaintiffs' claims of medical malpractice, wrongful death, and breach of contract were barred by the applicable statutes of limitations. *Siegel v. State*, 2020-Ohio-4708, ¶ 31-38, 71 (10th Dist.). However, the Tenth District Court of Appeals found that based "on this record" for summary judgment this Court erred in granting summary judgment in favor of Defendant regarding Plaintiffs' claims of fraud and spoliation of evidence, as "inferences" could be made in Plaintiffs' favor. (Emphasis added.) *Siegel* at ¶ 1, 39-52. The Tenth District Court of Appeals reversed and remanded the portion of

this Court's decision regarding Plaintiffs' claims for fraud and spoliation of evidence for further proceedings. *Id.* at ¶ 65.

{¶14} On May 19, 2023, and June 2, 2023, Defendant and Plaintiffs, respectively, filed motions for summary judgment. This Court found that issues of material fact and credibility existed and denied both Parties' motions. (Entry, Dated Sep. 28, 2023).

{¶15} On November 6-9, 2023, the present case was tried before the Magistrate solely on Plaintiffs' remaining claims of fraud and spoliation of evidence. On September 4, 2024, the Magistrate rendered her decision. In her decision, the Magistrate held that Plaintiffs had failed to satisfy all necessary requirements for their claims of fraud and spoliation of evidence; however, regardless of whether Plaintiffs had established their claims for fraud and spoliation of evidence, Plaintiffs' claims were barred by the statute of limitations. (Magistrate's Decision, p. 76-92). On September 18, 2024, Plaintiffs filed objections to the Magistrate's decision. On September 30, 2024, Defendant filed a brief reply and on October 4, 2024, Plaintiffs filed a response.

Plaintiffs' Objections

{¶16} As an initial matter, Plaintiffs' brief is difficult to decipher and lacks clear organization. Plaintiffs failed to properly enumerate their objections or follow consistent formatting regarding objections and arguments. Additionally, many of Plaintiffs' objections are not stated with particularity as required by L.C.C.R. 24(B)(1) and Civ.R. 53(D)(3)(b)(ii). Nonetheless, in the interest of justice this Court has attempted to interpret cognizable arguments and will address those arguments as objections. As many of Plaintiffs' potential objections overlap, they have been grouped into categories for ease of analysis.

{¶17} Plaintiffs' identifiable objections can be categorized as: whether the Tenth District Court of Appeals' remand bars this Court from reviewing the statute of limitations for Plaintiffs' claims of fraud and spoliation of evidence; if the statute may be reviewed, when the cognizable event for the discovery rule occurred in relation to Plaintiffs' claims for fraud and spoliation of evidence; after determining when the statute of limitations began, whether the statute of limitations bars Plaintiffs' claims for fraud and spoliation of evidence; whether Plaintiffs met all the elements to prove spoliation of evidence; whether

Plaintiffs met all the elements to prove fraud; whether the Magistrate applied the correct legal standard in analyzing Plaintiffs' fraud and spoliation of evidence claims; whether the Magistrate properly applied the correct evidentiary standards and appropriately determined the credibility of the witnesses; and various objections to witness testimony. All other topics not categorized above were not properly raised as objections pursuant to Civ.R. 53(D)(3)(b)(ii) or relate to previous rulings of this Court which Plaintiffs state are "[i]n order to preserve issues on appeal plaintiffs wish to raise and no waive [sic] the following". (Plaintiffs' Objections, p. 22).

Standard of Review

{¶18} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 67 (1964). Therefore, the Magistrate, as the trier of fact in a bench trial, is free to rely on the facts she deems most relevant and material to the issues at hand and free to disregard some evidence and rely on other evidence, in part, in whole, or any deviation in between. *See Siegel v. Univ. of Cincinnati College of Med.*, 2015-Ohio-441, ¶ 12 (10th Dist.) ("Appellants' suggestion that a magistrate, whether by individual capacity of the magistrate or by authorization from the court, is incapable of deciding the facts and weighing the credibility of witnesses, lacks merit.").

{¶19} When a court independently reviews objections to a magistrate's decision, a court may give weight to a magistrate's assessment of witness credibility as the magistrate had firsthand exposure to the evidence. *Id.* However, "[a]lthough the trial court may appropriately give weight to the magistrate's assessment of witness credibility in view of the magistrate's firsthand exposure to the evidence, the trial court must still independently assess the evidence and reach its own conclusions." *Sweeney v. Sweeney*, 2006-Ohio-6988, ¶ 15 (10th Dist.), citing *DeSantis v. Soller*, 70 Ohio App.3d 226, 233 (10th Dist. 1990).

Dispositive Objections: Statute of Limitations and the Discovery Rule

{¶20} Upon thorough independent review of the Magistrate's decision and Plaintiffs' objections, the Court acknowledges that the focus of the Parties at trial was on the merits of Plaintiffs' claims of fraud and spoliation of evidence. However, because the statute of limitations is dispositive in this case, it will be addressed first.

Statute of Limitations: *The Tenth District Court of Appeals' remand does not bar this Court from reviewing and determining the statute of limitations in relation to Plaintiffs' claims for fraud and spoliation of evidence.*

{¶21} In *Siegel*, 2020-Ohio-4708 (10th Dist.), the Tenth District Court of Appeals reviewed Plaintiffs' appeal of this Court's May 1, 2019 Entry granting Defendant's motion for summary judgment. The Tenth District Court of Appeals stated that "*on this record*,"³ "[t]he medical malpractice, contract, and wrongful death claims against Dr. Ringer's employer under R.C. 2743.02(A)(2) are time-barred. The spoliation and fraud claims are not." *Id.* at ¶ 65. Accordingly, the Tenth District Court of Appeals reversed and remanded Plaintiffs' claims for fraud and spoliation of evidence back to this Court for further proceedings. *Id.*

{¶22} Plaintiffs argue that because the Tenth District Court of Appeals remanded the present action for Plaintiffs' fraud and spoliation of evidence claims that issues related to the statute of limitations are "collaterally estopped from being re-litigated by the magistrate." (Plaintiffs' Objections, p. 2). Specifically, Plaintiffs allege that the Magistrate erred when "[she] took it upon herself to re-litigate the very issue upon which the Tenth District had already determined." *Id.* Defendant argues that the Magistrate properly determined the factual issues and appropriately applied the law in holding Plaintiffs' claims for fraud and spoliation of evidence were not timely filed. (Defendant's Response in Opposition, p. 5).

{¶23} In her decision, the Magistrate noted that the "Tenth District Court of Appeals reversed and remanded the portion of this court's decision regarding plaintiffs' claims for fraud and spoliation of evidence because it found that those claims were not medical

³ (Emphasis added.) *Id.* at ¶ 1.

claims, and that they were not barred by the applicable statute of limitations *based upon the evidence in the record at that time.*” (Emphasis added.) (Magistrate’s Decision, p. 2, citing *Siegel* at ¶ 65).

{¶24} The Tenth District Court of Appeals’ remand and judgment entry demonstrates that the Magistrate correctly interpreted the Tenth District Court of Appeals’ remand. In the Judgment Entry, the Tenth District Court of Appeals stated,

[i]t is the judgment and order of this court that the judgment of the Court of Claims of Ohio is affirmed in part and reversed in part. The case is remanded to the Court of Claims of Ohio for further proceedings limited to the spoliation and fraud claims, with judgment for appellees affirmed as to all other claims.

Siegel v. State, 2020-Ohio-4708, Judgment Entry (10th Dist.).

{¶25} A thorough independent review of the Tenth District Court of Appeals’ remand of *Siegel* reveals that the statute of limitations related to Plaintiffs’ claims of fraud and spoliation of evidence was not fully litigated. Collateral estoppel requires that,

Plaintiffs had a fair opportunity to ‘fully litigate and to be ‘heard’ in the due process sense. Accordingly, an absolute due process prerequisite to the application of collateral estoppel is that the party asserting the preclusion must prove that the identical issue was *actually litigated, directly determined*, and essential to the judgment in the prior action.

(Emphasis added.) *Goodson v. McDonough Power Equip.*, 2 Ohio St.3d 193, 200-201, (1983). As evidenced by the Tenth District Court of Appeals’ remand, Plaintiffs’ claims were neither fully litigated nor determined. *See Siegel generally.*

{¶26} The Tenth District Court of Appeals, given the facts presented to them at the time, held that when drawing all “inferences” in favor of Plaintiffs, that Defendant had failed to establish, on a motion for summary judgment, that Plaintiffs’ claims for fraud and spoliation of evidence were time barred. *Siegel* at ¶ 39-52. Accordingly, in this Court’s view, it is not precluded from reviewing the statute of limitations on Plaintiffs’ remaining claims of fraud and spoliation of evidence at trial and Plaintiffs’ argument regarding collateral estoppel is without merit.

{¶27} Next, Plaintiffs' argument involving law-of-the-case on this issue is without legal merit. The law-of-the-case doctrine is considered a rule of practice rather than a rule of substantive law and will not be applied to achieve unjust results. *Nolan v. Nolan*, 11 Ohio St.3d 1 (1984). For this reason, it is a well-settled position among Ohio courts that the doctrine does not apply when subsequent proceedings *involve different facts*, legal issues, or *different evidentiary standards*. (Emphasis added.) *Stemen v. Shibley*, 11 Ohio App.3d 263, 266 (6th Dist. 1982) ("the doctrine of the law of the case does not foreclose a party from filing, nor a court from considering, a new motion for summary judgment based upon an expanded record, where a trial court had previously granted that party's motion for summary judgment which was subsequently reversed on appellate review."); *Johnson v. Morris*, 108 Ohio App.3d 343, 349 (4th Dist. 1995) (the doctrine of the law of the case did not apply to preclude the trial court from rendering summary judgment after it had previously denied a motion to dismiss on the same legal issue because the two motions involve different evidentiary standards); *Stowell v. Ohio Fuel Gas Co.*, 13 Ohio Law Abs. 620, 625 (3rd Dist. 1933) (the law of the case did not apply in successive trials where the evidence was not identical); see also *Clymer v. Clymer*, 1995 Ohio App. LEXIS 4303, *9 (10th Dist. 1995).

{¶28} Whether the law-of-the-case doctrine applies in a particular situation constitutes a question of law. *DeAscentisi v. Margello*, 2008-Ohio-6821, ¶ 12 (10th Dist.). See generally *Clymer* at ¶ 9 ("Additional evidence, prior error or a change in circumstance might well argue against blind adherence to a prior ruling.") Furthermore, the statute of limitations presents the factfinder with a mixed question of both law and fact. *Wells v. C.J. Manhan Constr. Co.*, 2006-Ohio-1831, ¶ 25 (10th Dist.); see also *Majesky v. Lawrence*, 2015-Ohio-49, ¶ 10 (9th Dist.).

{¶29} Upon thorough independent review, this Court notes that the facts at the trial before the Magistrate have substantially changed from the facts presented to the Tenth District Court of Appeals. Notably, the Tenth District Court of Appeals quoted Daniel Siegel's testimony from the evidentiary hearing in 2013,

that it took approximately until November or early December 2006 to obtain the autopsy report from the hospital. It then was some time before [Daniel Siegel] could summon the will to read his daughter's autopsy . . . After Siegel

finally read the autopsy, he and his sister-in-law met with Dr. Ringer approximately one year after Jessica's death.

(Internal citations omitted.) *Siegel*, 2020-Ohio-4708, at ¶ 14 (10th Dist.); see also (Hearing Transcript, p. 132-33).

{¶30} Further, the Tenth District Court of Appeals noted that “Frances Siegel (Jessica's mother) testified briefly, confirming that . . . *they first read the autopsy report approximately one year after Jessica's death.*” (Emphasis added.) *Id.*; see also (Hearing Transcript, p. 150-51, 154-55). The Tenth District Court of Appeals in their review of the facts at the time stated, “[a]lthough the Siegels did not view the autopsy report immediately after receiving it in December 2006, *to exercise reasonable diligence would have been to read the autopsy report near the time it was received.*” (Emphasis added.) *Id.* at ¶ 36.

{¶31} At trial before the Magistrate, Frances Siegel's testimony changed in at least two substantial ways. First, Plaintiffs have testified for over a decade that, despite physically possessing Jessica's medical records and autopsy report, they did not read them for over a year. (Hearing Transcript, p. 150-55). However, at trial, Frances Siegel testified that she and Daniel Siegel read the autopsy report in December 2006, when they first received it, and a year earlier than both had previously testified to. (Trial Transcript, p. 589-590).

{¶32} Second, the Tenth District Court of Appeals' remand relied on Plaintiffs' testimony that, “[a]fter Siegel finally read the autopsy, he and his sister-in-law met with Dr. Ringer *approximately one year* after Jessica's death.” (Internal citations omitted.) (Emphasis added.) *Siegel*, 2020-Ohio-4708, at ¶ 14 (10th Dist.). The record now demonstrates that the timeline Plaintiffs presented to the Tenth District Court of Appeals is unsupported by the evidence at trial. Plaintiffs spoke with Dr. Ringer regarding Jessica's treatment at a significantly later date than they originally presented to the Tenth District Court of Appeals. (Trial Transcript, p. 109-110).

{¶33} Notwithstanding Plaintiffs' inconsistent testimony, it is important to note that the standard of review utilized by the Tenth District Court of Appeals in their review of an appeal of a motion for summary judgment differs from that at trial. In reviewing Plaintiffs' appeal from the granting of summary judgment in favor of Defendant, the Tenth District

Court of Appeals was required to construe the evidence most strongly in favor of the Plaintiffs. *Siegel* at ¶ 27; see *Dresher v. Bert*, 75 Ohio St.3d 280, 294 (1996). In drawing all reasonable inferences in favor of Plaintiffs, the Tenth District Court of Appeals found that Defendant failed to demonstrate that no genuine issues of material fact exist for Plaintiffs' claims of fraud and spoliation of evidence. *Siegel* at ¶ 40, 65.

{¶34} At trial, the Magistrate was not required to weigh Plaintiffs' evidence in their favor as the Tenth District Court of Appeals was. Rather, at trial, Plaintiffs were required to prove their claims by the preponderance of the evidence. The "preponderance of the evidence is 'the greater weight of the evidence . . . [which] means evidence that is more probable, more persuasive, or of greater probative value.'" (Internal quotations removed.) *Brothers v. Morrone-O'Keefe Dev. Co., LLC*, 2007-Ohio-1942 (10th Dist.); see also *Stemen*, 11 Ohio App.3d at 266 (the law-of-the-case doctrine does not apply when subsequent proceedings involve . . . different evidentiary standards).

{¶35} Additionally, at trial, the statute of limitations for Plaintiffs' claims of fraud and spoliation of evidence, unlike Plaintiffs' claims for medical malpractice and wrongful death, was examined under a two-year statute of limitations pursuant to R.C. 2743.16(A). These changes in facts and evidentiary standards between the Tenth District Court of Appeals and this Court does not preclude this Court from determining the statute of limitations on Plaintiffs' claims of fraud and spoliation of evidence. See *Nolan*, 11 Ohio St.3d at 3.

{¶36} It would contradict *Nolan* to hold that parties are collaterally estopped from litigating key issues at trial when the facts and evidentiary standards of the case change. Upon independent review, the Court finds that the Magistrate did not err when determining whether the Tenth District Court of Appeals' remand bars this Court from reviewing the statute of limitations for Plaintiffs' claims of fraud and spoliation of evidence. Plaintiffs' objections related to the Magistrate determining the statute of limitations to Plaintiffs' claims of fraud and spoliation of evidence are **OVERRULED**.

Discovery Rule: *Plaintiffs satisfied the discovery rule in December 2006 and the statute of limitations began to run at such time.*

{¶37} Plaintiffs argue that the Magistrate erred when she determined that the cognizable event beginning the statute of limitations occurred when Plaintiffs received, read, and began further inquiries into Jessica’s medical records in December 2006. Plaintiffs argue that the Magistrate’s analysis fails to properly follow the standard outlined in *O’Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 90 (1983). Plaintiffs state that the Magistrate erred when she “. . . neglects the fact that the report did not indicate why or who was responsible.” (Plaintiffs’ emphasis removed.) (Plaintiffs’ Objections, p. 3.) In further support of their arguments regarding the discovery rule, Plaintiffs state that the Magistrate incorrectly failed to consider the two attorneys’ testimony from whom Plaintiffs sought legal guidance in January and April 2007. *Id.* at p. 6.

{¶38} Pursuant to R.C. 2743.16(A), “civil actions against the state . . . shall be commenced no later than two years after the date of accrual of the cause of action” Generally, the Court of Claims only deviates from this two-year statute of limitations authorized by R.C. 2743.16(A) when “any shorter period” of limitations applies or it is otherwise explicitly required by law.

{¶39} The Tenth District Court of Appeals has stated, [u]nder Ohio law, “[a] cause of action for fraud or conversion accrues either when the fraud is discovered, or [when] in the exercise of reasonable diligence, the fraud should have been discovered.” *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 2009-Ohio-2523, ¶ 29, 909 N.E.2d 1244, citing *Investors Reit One* at paragraph 2b of the syllabus. In “determining whether the exercise of reasonable diligence should have discovered a case of fraud, the relevant inquiry is whether the facts known ““would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry.”” *Id.*, quoting *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 181, 12 Ohio B. 246, 465 N.E.2d 1298 (1984), quoting *Schofield v. Cleveland Trust Co.*, 149 Ohio St. 133, 142, 78 N.E.2d 167 (1949). Further, “[c]onstructive knowledge of facts, rather than *actual* knowledge of their legal significance, is enough to start the statute of limitations running under the **discovery rule**.” (Emphasis sic.) *Id.* at ¶ 30, quoting *Flowers v. Walker*, 63 Ohio St.3d 546, 549, 589 N.E.2d 1284 (1992).

Cain v. Panitch, 2018-Ohio-1595, ¶ 44 (10th Dist.).

When an injury does not manifest itself immediately, the cause of action arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured, *or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured, whichever date occurs first.*

(Emphasis added.) *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 90 (1983). *Cundall v. U.S. Bank*, 2009-Ohio-2523, ¶ 29, also requires a plaintiff have exercised "reasonable diligence". *Hambleton*, 12 Ohio St.3d 179, at 181 states that the "relevant inquiry is whether the facts known 'would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry.'" The Ohio Supreme Court has explained that "the 'cognizable event' itself puts the plaintiff on notice to *investigate the facts and circumstances relevant to her claim in order to pursue her remedies.*" (Emphasis added; internal citations omitted.) *Flowers v. Walker*, 63 Ohio St.3d 546, 549 (1992). Once the cognizable event occurs, a potential plaintiff must investigate the circumstances relevant to their claim and diligently pursue any potential remedy. *Simonds v. Kearney*, 2002-Ohio-761, ¶ 11 (9th Dist.).

{¶40} The Tenth District Court of Appeals stated in their remand to this Court, "[a]lthough the Siegels did not view the autopsy report immediately after receiving it in December 2006, *to exercise reasonable diligence would have been to read the autopsy report near the time it was received.*" (Emphasis added.) *Siegel* at ¶ 36.

{¶41} The record now conclusively demonstrates that Plaintiffs not only read Jessica's autopsy report when they received it in December 2006 but also satisfied the reasonable diligence standard outlined in *Hambleton* and *Flowers* when they began their search for legal counsel. At trial, Frances Siegel testified that,

Q. You received the autopsy report I think you said sometime in December of '06?

A. Yes.

Q. Excuse me. And I think you said when you looked at it, it was confusing?

A. Yes.

. . .

Q. And so when you first saw the autopsy report, you -- I take it you thought that was unusual and obviously wrong, so there's something going on here?

A. Well, I didn't know if something was going on. I just looked at it and said 5 foot, 10 inches, she was 5 foot 3. *And then I proceeded to look at the rest of it --*

. . .

Q. *When you looked at it, did you also notice that it said -- under autopsy restrictions, it says none. And then it says no head?*

A. Yes. *I did see that.*

Q. Okay. And then after -- and you said you got the autopsy report about the same time you got the records, right?

A. I believe so.

Q. Okay. And when you looked at it, you noticed these things were kind of different. And *you decided that you wanted to find out what was meant by some of these things that you didn't understand?*

A. Correct.

Q. *And then you or your husband talked to Herb Siegel, talked to Herb Siegel and found out about Mr. Scott?*

A. Yes.

(Emphasis added.) (Trial Transcript, p. 589-592).

In her review of the evidence, the Magistrate determined that, a reasonable person, even without a medical background, would or should have known that "Autopsy Restrictions: None NO HEAD," and "[t]here was no permission for removal of the brain" meant that Jessica's brain was not examined in the autopsy. The Siegels testified that they wanted and expected a complete autopsy. It logically follows that they knew that they had given permission for removal of the brain, and when the autopsy report stated that no permission was given, that statement would put a reasonable

person on notice that something was wrong and needed further investigation.

(Magistrate's Decision, p. 80.)

Additionally, the Magistrate held that,

[t]he evidence in the record now shows that the Siegels did, in fact, have questions about the autopsy, and they sought legal counsel in January 2007, before any statute of limitations had expired. Attorney Scott explained his reasons for not taking the Siegels' medical malpractice and wrongful death cases in the letter that he sent them on April 1, 2007. Plaintiffs' Exhibit 13F. Scott then explained the statutes of limitations for medical malpractice and wrongful death claims. *Id.* Attorney Scott testified that the lack of a complete autopsy was not the sole reason to decline to investigate Jessica's case any further. Trial transcript, p. 340.

Id.

{¶42} Upon careful independent review of the record, the Court finds that the Magistrate did not err in concluding that Plaintiffs, had they exercised reasonable diligence, could or should have determined in December 2006,⁴ after having received and read Jessica's medical records, that fraud had occurred. (Magistrate's Decision, p. 80). Accordingly, to timely file the instant action, Plaintiffs needed to file their claims for fraud and spoliation of evidence no later than December 2008. *Id.*; see R.C. 2743.16(A); see also *Cundall*, 2009-Ohio-2523, ¶ 29.

{¶43} It appears Plaintiffs' argument is that Plaintiffs could not or should not have known they were potentially injured by the conduct of Dr. Ringer until after the deposition of Nurse Amie Smith on December 17, 2008. Plaintiffs argue that the cognizable event, beginning their statute of limitations, was when Plaintiffs obtained actual knowledge pursuant to *Collins v. Sotka*, 81 St.3d 506, 507 (1998). Plaintiffs' reliance on *Collins* and the notion that the statute of limitations begins to run only once Plaintiffs obtained actual knowledge is misplaced and without legal merit.

⁴ The Court is unable to further narrow the date as there is no clear evidence regarding the exact date Plaintiffs received Jessica's medical records.

{¶44} In *Collins* the Supreme Court of Ohio addressed the statute of limitations and discovery rule after a murder victim's body was discovered five months after the murder, and the murderer's identity revealed publicly only at a later date. *Id.* at p. 506. The facts present in *Collins* are simply not present, nor reasonably applicable here.

{¶45} In *Collins*, the underlying facts stem from the abduction and killing of seventeen-year-old Angel Ormston on July 31, 1992. Nearly five months later, on December 15, 1992, two hunters discovered Ormston's body in the woods in Perry Township. An autopsy was performed by the Cuyahoga County Coroner's Office, finding the cause of death to be multiple stab wounds. The first death certificate listed the date of death as "unknown". At the request of the Ormston's family, a second death certificate was issued listing the date of death as July 31, 1992, the date Ormston disappeared.

{¶46} On January 4, 1993, the Lake County Grand Jury handed down a secret indictment against Mark Sotka, charging him with aggravated murder, aggravated kidnapping, and aggravated felonious assault. On February 5, 1993, Sotka pled guilty to the aggravated murder and kidnapping of the decedent and the trial court sentenced Sotka. On February 6, 1995, the administrator for the estate of Ormston, more than two years after the dated death of Ormston, filed a *pro se* wrongful death action against Sotka who sought to dismiss the complaint on the ground that it had not been timely filed within the two-year statute of limitations for a wrongful death action. Appellee argued that since the wrongful death action was not commenced within two years from the date of Ormston's death (which was said to be July 31, 1992), the action was time-barred under R.C. 2125.01. The trial court dismissed the case because the action was not commenced within two years from the date of death. *Id.* at p. 506-507.

{¶47} The Supreme Court of Ohio specifically cites the fact that Sotka's identity was not publicly revealed until the trial more than a year after the murder of Ormston, thus making it impossible for Ormston's estate to know who the proper parties to the action at the time of the cognizable incident were. *Id.* In contrast, Jessica Siegel's death was not a murder, and all potential tortfeasors were known and apparent. Jessica died while under the care of Defendant. Dr. Ringer was Jessica's treating physician and had performed two embolization surgeries on Jessica in the days and weeks preceding her death. It is unreasonable for Plaintiffs to argue that they could not determine potentially

who may have performed the alleged fraudulent conduct, regardless of Dr. Ringer's subsequent statements or Nurse Smith's deposition testimony. Plaintiffs' argument that they did not know or could not have known fraud had occurred based on Jessica's medical records is unpersuasive.

{¶48} It is worth noting that the Tenth District Court of Appeals has already rejected Plaintiffs' argument regarding *Collins*, 81 St.3d 506.⁵ The Tenth District Court of Appeals' analysis supports this Court's reading, that *Collins* is inapplicable to the present matter. As stated by Judge Beatty Blunt;

[i]n *Collins*, it is clear the court was particularly concerned with the facts of that case, which included that the death was the result of a murder; that the body had not been found until almost five months after the murder (and hence the death) had occurred; and that although the cause of death became apparent when the time the body was found, the tortfeasor's identity was not known at that point. See *Collins* at 506, 510. To avoid the inequities which would result from a rigid application of the statute of limitations set forth in R.C. 2125.02(D), the high court went on to hold that "[i]n a wrongful death action that stems from a murder, the statute of limitations begins to run when the victim's survivors discover, or through the exercise of reasonable diligence should have discovered, that the defendant has been convicted and sentenced for the murder." *Collins* at paragraph two of the syllabus.

The wrongful death claim at issue in the case before us arises not from a murder, but from allegations of medical malpractice. The concerns present in the *Collins* case are simply not present in the instant matter. More specifically, the death of the decedent was apparent at the time it occurred and the identities of any potential tortfeasors—i.e., the medical professionals who rendered care to Jessica—were known at that time.

⁵ *Siegel v. State*, 2020-Ohio-4708, ¶ 73-75 (10th Dist.), see also *State v. Siegel*, No. 19AP-355, ¶ 5, Memorandum Decision (December 31, 2020, 10th Dist.).

Although the specific cause of death may not have been immediately apparent, this is so in many medical malpractice cases.

Therefore, the discovery rule analysis applicable to medical malpractice actions as prescribed by the authority set forth in *Hershberger v. Akron City Hosp.*, 34 Ohio St.3d 1, 516 N.E.2d 204 (1987); *Allenius v. Thomas*, 42 Ohio St.3d 131, 538 N.E.2d 93 (1989); and *Flowers v. Walker*, 63 Ohio St.3d 546, 589 N.E.2d 1284 (1992), controls.

(Beatty Blunt, L., Concurring Opinion) *Siegel*, 2020-Ohio-4708, ¶ 73-75 (10th Dist.).

{¶49} Accordingly, Plaintiffs' argument that the cognizable event triggering the discovery rule occurred after obtaining actual knowledge of who may have altered the autopsy report is not well taken. The discovery rule does not require actual knowledge as Plaintiffs suggest. Pursuant to *Cundall*, 2009-Ohio-2523, at ¶ 29, constructive knowledge is enough to begin the statute of limitations and Ohio courts have held that "consulting with an attorney itself indicates a cognizable event." *Halliwell v. Bruner*, 2000 Ohio App. LEXIS 5896, *19 (8th Dist. Dec. 14, 2000), citing *Burris v. Romaker*, 71 Ohio App.3d 772 (3rd Dist. April 4, 1991); see *Fry v. Hanni*, 2014-Ohio-2346, ¶ 25 (7th Dist.); see also *Estate of Greenawalt v. Estate of Freed*, 2018-Ohio-2603, ¶ 24 (10th Dist.), citing *Astente v. Gargano*, 2004-Ohio-5069, ¶14 (10th Dist.) (the plaintiff need not have discovered all of the relevant facts necessary to file a claim in order to trigger the statute of limitations).

{¶50} Plaintiffs, having read Jessica's autopsy report in December 2006, noted issues and had concerns serious enough to seek legal counsel. Plaintiffs began their legal search immediately after reading Jessica's medical records when they inquired with Herb Siegel and were put into contact with Attorney Scott in early January 2007. (Trial Transcript, p. 589-591). Plaintiffs have no justifiable reason to argue they could or should not have known they were potentially injured or by whom. Plaintiffs knew something was incorrect with Jessica's medical records and immediately sought legal advice upon realizing that their request for a complete autopsy went unfulfilled. *Id.*, see also (Defendant's Exhibit, E; Defendant's Exhibit F).

{¶51} Next, Plaintiffs argue that ". . . the report did not indicate why or who was responsible" for the changes to Jessica's autopsy request and that Plaintiffs could not

have known of Dr. Ringer's involvement or potential involvement in the change to Jessica's autopsy until Nurse Smith's testimony in 2008. (Plaintiffs' emphasis removed.) (Plaintiffs' Objections, p. 3). The Court is unmoved by Plaintiffs' argument, Jessica's medical records explicitly state that Dr. Ringer ordered the change.

{¶52} Following Jessica's death, on August 23, 2006, Dr. Ringer approached Plaintiffs and requested that they approve an autopsy of Jessica. (Trial Transcript, p. 588-89). Plaintiffs obtained possession of Jessica's medical records and testified to reading said records in December 2006, these records include the autopsy request form and the autopsy order form. *Id.*

{¶53} The autopsy request form includes two handwritten notes by Nurse Smith. (Defendant's Exhibit, E). The first, a crossing out of a section, "8. Complete (including head and brain)" and underneath the first note stating, "ERROR – AS [Amy Smith] 8/23/06 2030". *Id.* Located in the bottom right margin, the second handwritten note states, "See order sheet verbal order – Dr. Andrew Ringer requested". *Id.*

{¶54} Jessica's medical records also contain Jessica's autopsy order form. (Defendant's Exhibit F). The autopsy order form bears Dr. Ringer's signature and is dated 8/23/06 at 20:30. *Id.* The same time and date as Nurse Smith's note documenting the change made by Dr. Ringer. *Id.*

{¶55} The record now conclusively demonstrates that Jessica's medical records very clearly state that Dr. Ringer ordered the changes to Jessica's autopsy request form. *Id.* Accordingly, when Plaintiffs read Jessica's autopsy report in December 2006, and had concerns regarding its completeness, a reasonable person would have been put on notice that a fraudulent act may have occurred.

{¶56} However, the appearance of a potential cognizable event alone is not enough to begin the statute of limitations, as the discovery rule has an additional requirement, whether the cognizable event would "lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry." *Cundall*, 2009-Ohio-2523, ¶ 29, quoting *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 181 (1984). Plaintiffs met this requirement when they made further inquiries with Herb Siegel in December 2006 by seeking legal counsel, and when they followed through on those inquiries and spoke with Attorney Scott regarding Jessica's medical records.

{¶57} In December 2006, Daniel Siegel reached out to his brother, Herb Siegel, inquiring about contacting an attorney to review Jessica's medical records. (Trial Transcript, p. 298-302; 589-91). In early January 2007, Plaintiffs spoke with Attorney Paul Scott to discuss Jessica's medical records and representation. *Id.* Attorney Scott reviewed Plaintiffs' case and Jessica's medical records but ultimately declined to represent Plaintiffs. *Id.* at p. 316. Attorney Scott informed Plaintiffs, in his letter declining representation, of the applicable statute of limitations for their claims. (Plaintiffs' Exhibit 13F). Attorney Scott stated at trial, "I think a client, a potential client, has a right to at least know the terrible short time limitations. So sometimes we would say you only have a year from when you knew or should have known there was a problem, and be careful. We could be a little more specific in a death case. But it's so important because you lose your claim forever." (Trial Transcript. p. 327.) Attorney Scott in his letter dated April 1, 2007, declined to represent Plaintiffs and stated,

[y]our situation involves a claim for wrongful death. **There is a one-year time limitation within which your medical malpractice claim must be filed.** There is a two-year time period, from the date of death, for filing a wrongful death claim caused by medical negligence. However, any claim for pain and suffering or other losses is controlled by the one-year limit. The one year time period begins to run either (1) when the patient discovers or, in the exercise of reasonable care and diligence should have discovered, the resulting injury, or (2) when the physician-patient relationship for the condition terminates, whichever occurs later."

(Emphasis in original.) (Plaintiffs' Exhibit 13F).

{¶58} Attorney Scott then presented another attorney, Attorney Joseph Shea, with Plaintiffs' case. (Trial Transcript at p. 316; see also Plaintiffs' Exhibit 13G.) On June 15, 2007, Attorney Shea likewise declined to represent Plaintiffs. (Plaintiffs' Exhibit 14.) Plaintiffs stated that while seeking legal counsel:

[w]e were on a fact finding mission, trying to find out if somebody could read these medical reports and tell us what happened. And the only way to do that is I think we had already went to Dr. Ringer, he didn't answer a lot of the questions. And he – you know, so we went to an attorney thinking they

could look at this autopsy report and see if – if something was wrong with it or if indeed it was the correct autopsy report.

(Trial Transcript, p. 594).

{¶59} At trial, Plaintiffs maintained that they first spoke with Dr. Ringer prior to seeking legal counsel. *Id.* However, the evidence at trial developed differently, and the full record contradicts Plaintiffs' testimony and timeline of events. The evidence now demonstrates that Plaintiffs first spoke with Dr. Ringer *after* speaking to both Attorneys Scott and Shea. This timeline of events is important as it further demonstrates that Plaintiffs could not have justifiably relied on Dr. Ringer's alleged statements to extend the statute of limitations, as the statute of limitations had already begun when Plaintiffs read Jessica's medical records and sought legal counsel.

{¶60} Dr. Ringer first sent a letter to the Siegels inviting them to discuss Jessica's treatment on August 31, 2006. (Defendant's Exhibit B, p. 28). Dr. Ringer's letter stated in pertinent part:

After an unexpected event such as this, the vast amount of information offered to you at the hospital will swirl through your head nearly impossible to decipher. I would like to offer each of you an opportunity to have your questions answered and to provide some closure to this unfortunate episode. Please contact my office at your convenience and we will set a time to meet in person. I will do my best to answer all of your questions or concerns. . . Please call me whenever you feel ready to discuss her care.

{¶61} Despite Dr. Ringer's follow-up letter in January 2007, inviting Plaintiffs a second time to discuss their questions or concerns with him, Plaintiffs did not speak with Dr. Ringer at that time. *Id.* at p. 29. Plaintiffs first responded to Dr. Ringer's invitations in September 2007, *after* speaking to both Attorneys Scott and Shea. (Trial Transcript, p. 109). Plaintiffs' conference with Dr. Ringer was rescheduled multiple times, and Plaintiffs finally met Dr. Ringer to discuss Jessica's treatment and medical records on January 17, 2008. *Id.* at p. 109-110.

{¶62} This modified timeline demonstrates that Plaintiffs did not speak with Dr. Ringer prior to speaking with legal counsel as they presented and testified to. Plaintiffs sought legal counsel beginning in December 2006 when they spoke with Herb Siegel,

and by January 2007 they were in contact and speaking with Attorney Scott. A year before Plaintiffs spoke with Dr. Ringer. Yet, at trial, Frances Siegel testified that, “I think we had already went to Dr. Ringer, he didn't answer a lot of the questions. And he – you know, so we went to an attorney thinking they could look at this autopsy report and see if – if something was wrong with it or if indeed it was the correct autopsy report.” (Trial Transcript, p. 594). Accordingly, the Court finds that the first time Plaintiffs spoke to Dr. Ringer regarding Jessica’s treatment and medical records was on January 17, 2008, not near the one-year anniversary, August 2007, of Jessica’s death.

{¶63} It is uncontested that Dr. Ringer approached Plaintiffs and asked that Plaintiffs approve an autopsy of Jessica. (Defendant’s Exhibit E; Defendant’s Exhibit F.) When Plaintiffs received Jessica’s medical records and autopsy report in December 2006, Plaintiffs noted issues and sought legal counsel in January 2007. (Trial Transcript, p. 589-592.) After Attorneys Scott and Shea declined to represent Plaintiffs, Plaintiffs were twice informed of the relevant statute of limitations by Attorney Scott. *Id.* at p. 597. Plaintiffs ignored Attorney Scott’s warnings. “Q. All right. And did you know at that time that the wrongful death statute of limitations that Mr. Scott had told you about twice was going to expire in about five months? A. No, sir. *We weren't even concerned about that.*” (Emphasis added.) *Id.* at p. 597.

{¶64} The Court notes that Plaintiffs retained their present counsel in March 2008, after receiving Attorney Scott’s warnings regarding the statute of limitations. Counsel for Plaintiffs filed a case in March 2008 for the unsanctioned harvesting of Jessica’s eyes. *See Siegel, et al. v. LifeCenter Organ Donor Network, et al.*, No. A0802827 (Hamilton C.P. Mar. 20, 2008). Plaintiffs’ case was based upon Jessica’s medical records and autopsy report, the very same at issue here. *Id.* At such time, the statute of limitations for Plaintiffs’ potential claims of fraud and spoliation of evidence had not yet run. However, counsel for Plaintiffs did not take the deposition of Nurse Smith until December 17, 2008, nor file the present case until December 16, 2009.

{¶65} Therefore, given Plaintiffs’ actions, the Court finds that Plaintiffs did have suspicions related to Dr. Ringer’s alleged conduct in December 2006. Plaintiffs ignored Dr. Ringer’s invitations to discuss Jessica’s treatment and care for over a year, responding only after Attorneys Scott and Shea declined to represent Plaintiffs. There is

no justifiable reason for Plaintiffs to have ignored Dr. Ringer's invitations, until only after seemingly exhausting their legal options at the time, if he was indeed free from suspicion as Plaintiffs suggest. Thus, Plaintiffs' argument that it was the deposition of Nurse Smith on December 17, 2008, as the date which Plaintiffs obtained knowledge of potentially fraudulent conduct and began to suspect Dr. Ringer is unpersuasive.

{¶66} While Plaintiffs may have obtained actual knowledge of Dr. Ringer's autopsy request form edits on December 17, 2008, during Nurse Smith's deposition, this was not the cognizable event starting the statute of limitations. Plaintiffs had constructive knowledge of Dr. Ringer's involvement in December 2006. (Trial Transcript, p. 109-110.) "Constructive knowledge of facts, rather than *actual* knowledge of their legal significance, is enough to start the statute of limitations running under the discovery rule." *Hambleton*, 12 Ohio St.3d 179, at ¶ 30, quoting *Flowers*, 63 Ohio St.3d 546, at 549, 589.

{¶67} Upon thorough independent review, the Court finds that the evidence demonstrates that Plaintiffs met all the requirements of the discovery rule outlined in *Cundall* in December 2006. Plaintiffs' testimony establishes that they possessed constructive knowledge in December 2006 when they first obtained and read Jessica's medical records. Plaintiffs had questions/concerns and began conducting reasonable inquiries when they immediately sought legal counsel in December 2006. By satisfying *Cundall* in December 2006, Plaintiffs' statute of limitations began to run at such time.

{¶68} To timely file the instant action, Plaintiffs needed to have filed their claims for fraud and spoliation of evidence no later than December 2008. However, Plaintiffs filed the present action on December 16, 2009, more than a year after the statute of limitations had run on their claims for fraud and spoliation of evidence. See R.C. 2743.16(A) ("civil actions against the state . . . shall be commenced no later than two years after the date of accrual of the cause of action . . ."). Therefore, the Court finds that the Magistrate did not err in correctly applying the discovery rule and statute of limitations to Plaintiffs' claims and that Plaintiffs' claims for fraud and spoliation of evidence are barred by the applicable statute of limitations.

{¶69} Plaintiffs' objections regarding the statute of limitations and discovery rule are OVERRULED.

Plaintiffs' Remaining Objections

{¶70} As this Court has determined that Plaintiffs' claims for fraud and spoliation of evidence were untimely filed and are barred pursuant to R.C. 2743.16(A), analysis of Plaintiffs' remaining objections is unnecessary. See *State ex rel. Luken v. Corp. for Findlay Mkt. of Cincinnati*, 2013-Ohio-1532, ¶ 25, citing *PDK Laboratories, Inc. v. United States Drug Enforcement Administration*, 362 F.3d 786, 799, (D.C.Cir. 2004); see also *Meyer v. UPS*, 2009-Ohio-2463, ¶ 53. Indeed, judicial restraint encourages this Court from further analysis regarding moot topics. *Id.* However, the doctrine of judicial restraint is considered a rule of practice rather than a rule of substantive law, and the Court acknowledges that much of the Parties' arguments, at trial and in these objections, involve the merits and facts based around Plaintiffs' claims of fraud and spoliation of evidence. Therefore, in the interest of justice the Court has thoroughly reviewed the remainder of Plaintiffs' objections.

Fraud: *Plaintiffs fail to satisfy all necessary elements to prove a claim for fraud.*

{¶71} Plaintiffs argue that the Magistrate improperly determined that they failed to satisfy all necessary requirements for their claim of fraud. (Objections, p. 12, 14-16).

The elements of fraud are as follows:

(1) a representation (or concealment of a fact when there is a duty to disclose) (2) that is material to the transaction at hand, (3) made falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, and (4) with intent to mislead another into relying upon it, (5) justifiable reliance, and (6) resulting injury proximately caused by the reliance.

Volbers-Klarich v. Middletown Mgt., Inc., 2010-Ohio-2057, ¶ 27, citing *Burr v. Stark Cty. Bd. of Commrs.*, 23 Ohio St. 3d 69, 73 (1986).

{¶72} In her decision, the Magistrate held that Plaintiffs failed to prove they justifiably relied on any statements or representations made by Dr. Ringer in the January 17, 2008 meeting. (Magistrate's Decision, p. 89). Upon thorough independent review, given the previously identified notes in Jessica's medical records, concerns Plaintiffs stated they had, and Plaintiffs' search for legal counsel, the Court disagrees with Plaintiffs'

argument that they justifiably relied on Dr. Ringer's statements until the deposition of Nurse Smith on December 17, 2008. See (Defendant's Exhibit E, F). When Plaintiffs received and read Jessica's medical records in December 2006, had serious concerns, and sought legal counsel, any reliance Plaintiffs may have had was thereafter unjustifiable. *Supra*, p. 20-27.

{¶73} The Court acknowledges that it has now been over eighteen years since Jessica's tragic death. Over such a long time, memories of events, especially traumatic ones such as the loss of a child, can and will change. However, upon thorough independent review of the entire record, the timeline of events and evidence in this case is clear. Plaintiffs received and read Jessica's medical records in December 2006. In reading Jessica's records, Plaintiffs noted serious concerns they had with her autopsy. Yet rather than accept Dr. Ringer's invitations to discuss such concerns, Plaintiffs chose to explore alternative legal options.

{¶74} The Court finds that in taking such actions, Plaintiffs demonstrated that they could not have justifiably relied on statements made by Dr. Ringer after December 2006. Accordingly, the Court finds that the Magistrate has properly determined the factual issues and appropriately applied the law as based on the record, Plaintiffs did not justifiably rely on any statements or representations made by Dr. Ringer. Plaintiffs' objections related to their claim of fraud are OVERRULED.

Spoliation of Evidence: *Plaintiffs fail to satisfy all necessary elements to prove a claim for spoliation of evidence.*

{¶75} *Smith v. Howard Johnson Co.* 67 Ohio St.3d 28, p. 29 (1993) states that the elements for spoliation of evidence are:

- (1) A cause of action exists in tort for interference with or destruction of evidence;
- (2a) the elements of a claim for interference with or destruction of evidence are (1) pending or probable litigation involving the plaintiff,
- (2) knowledge on the part of defendant that litigation exists or is probable,
- (3) willful destruction of evidence by defendant designed to disrupt the plaintiff's case, (4) *disruption of the plaintiff's case*, and (5) damages proximately caused by the defendant's acts.

(Emphasis added).

{¶76} “[A] spoliation claim in Ohio cannot succeed in the absence of a viable underlying claim.” *Johnson v. Plastek Indus., Inc.*, 2019 U.S. App. LEXIS 6096 (6th Cir. Feb. 27, 2019), citing *Jeffrey Mining Prods., L.P. v. Left Fork Mining Co.*, 143 Ohio App.3d 708 (8th Dist.2001). In *Norris v. Basden*, 2024-Ohio-1019, ¶ 49 (10th Dist.), the Tenth District Court of Appeals stated:

. . . dismissal of a spoliation claim is nevertheless still proper where the elimination of the underlying claims essentially negated a required element of the spoliation claim: . . . In the cases at hand, all other claims brought against [The Christ Hospital] were properly dismissed under Civ.R. 12(B)(6). Thus, plaintiffs would be unable to prove disruption of their respective cases and their spoliation-of-evidence claims would inevitably fail. . . . *Janson* at ¶ 32. See also *Landrum v. Durrani*, S.D. Ohio No. 1:18-cv-807, 2020 U.S. Dist. LEXIS 114182 (June 29, 2020) (explaining: ‘A spoliation of evidence claim requires a plaintiff to demonstrate actual ‘disruption of the plaintiff’s case.’ . . . Because the statute of repose bars Plaintiff’s claims against [Good Samaritan Hospital], Plaintiff cannot show the required disruption,’ the plaintiff cannot succeed on a spoliation of evidence, and therefore the trial court did not err in dismissing the claim.)”.

{¶77} Here, the First District and Tenth District Court of Appeals have held that Plaintiffs failed to timely file their underlying medical malpractice/wrongful death claims and that both claims are barred by the applicable statute of limitations. See *Siegel v. Ringer*, 2017-Ohio-6969, ¶ 27-33 (1st Dist.); see also *Siegel* 2020-Ohio-4708, ¶ 53 (10th Dist.). The Tenth District Court of Appeals stated “[t]he medical malpractice and contract causes of action are time-barred. According to the decision of the Court authored by Judge Beatty Blunt and joined by Judge Nelson (found at paragraph 71 et seq.), so is the wrongful death claim.” *Siegel*, 2020-Ohio-4708 at ¶ 53 (10th Dist.).

{¶78} As the First District and the Tenth District Courts of Appeals have held that “[t]he medical malpractice, contract, and wrongful death claims against Dr. Ringer’s

employer under R.C. 2743.02(A)(2) are time-barred”,⁶ Plaintiffs have no underlying claims to disrupt and Plaintiffs’ claim for spoliation of evidence fails on the merits. See *Smith* at p. 29. Thus, the Court finds that the Magistrate has properly determined the factual issues and appropriately applied the law. Plaintiffs’ objections related to their claim of spoliation of evidence are OVERRULED.

Legal Standards: *Plaintiffs’ objections related to the Magistrate applying the wrong legal standards are without merit.*

{¶79} Plaintiffs raise various objections related to the legal standards used by the Magistrate in analyzing Plaintiffs’ claims. (Objections, p. 10-11). Upon thorough independent review, the Court finds that Plaintiffs misrepresent the Magistrate’s decision by selectively omitting and breaking quotes to alter the plain meaning of her decision. See (Magistrate’s Decision, p. 78-79). Plaintiffs’ objections are without legal merit. The Court finds that the Magistrate has appropriately applied the law in reaching her decision. Plaintiffs’ objections related to the legal standards used by the Magistrate are OVERRULED.

Weighing of the Evidence: *Plaintiffs’ objections regarding factual determinations made by the Magistrate regarding the weight of the evidence and witness’ credibility are unpersuasive.*

{¶80} Plaintiffs argue that the Magistrate’s decision is against the weight of the evidence because their testimony is more credible than that presented by Defendant. (Objections, p. 13, 16-17). Upon thorough independent review, the Court finds that given the general inconsistency and substantial changes to Plaintiffs’ testimony and timeline of events, Plaintiffs’ testimony is less credible. The Court finds no reason to vacate the Magistrate’s factual and credibility determinations made in her decision. Plaintiffs’ objections related to the Magistrate’s weighing of evidence are OVERRULED. See *Sweeney v. Sweeney*, 2006-Ohio-6988, at ¶ 15 (10th Dist.), citing *DeSantis v. Soller*, 70 Ohio App.3d 226, 233 (10th Dist. 1990).

⁶ *Siegel*, 2020-Ohio-4708, ¶ 65.

Witnesses: Plaintiffs' objections related to expert witnesses are without legal merit.

{¶81} Plaintiffs bring various objections related to witnesses and experts used at trial. (Objections, p. 16-22). Upon thorough independent review of all the evidence, the Court finds that Plaintiffs' expert witness testimony largely relates to Plaintiffs' expired medical malpractice and wrongful death claims. While Plaintiffs argue that these experts' testimony is necessary to prove their claim of fraud, the Court is unconvinced. After reviewing the entirety of the record, Plaintiffs' expert witnesses' testimony and their questions to their witnesses demonstrate that Plaintiffs are attempting to circumvent the First and Tenth District Courts of Appeals' rulings and reargue their medical malpractice/wrongful death claims. Neither claim is before this Court, thus objections related to their experts' testimony on these issues are without merit. *See Siegel v. State*, 2020-Ohio-4708, ¶ 31-38, 71 (10th Dist.). The Court finds that Plaintiffs' objections to testimony related to their claims of fraud and spoliation of evidence are without merit as they do not affect this Court's analysis and decision related to the statute of limitations or their failure to satisfy all requirements for their claims of fraud and spoliation of evidence. As the Magistrate properly determined the factual issues and appropriately applied the law, Plaintiffs' objections regarding witnesses are OVERRULED.

Prior Court Rulings

{¶82} Plaintiffs raise two prior rulings of this Court "solely for purposes of appeal". (Plaintiffs' Objections, p. 22-23). Plaintiffs argue that Plaintiffs' motion for summary judgment was incorrectly denied by this Court in the entry dated September 28, 2023, and that this Court improperly denied Plaintiffs' motion for reconsideration of their motion to recuse Magistrate Shaver. *Id.* Civ.R. 53(D)(3)(b)(ii) states that "[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Plaintiffs fail to identify any cognizable error in factual determinations or legal application by the Magistrate and the Court finds no reason to reconsider its prior decisions. Plaintiffs attempt to raise objections or seek reconsideration to these two prior Court rulings are OVERRULED.

Conclusion

{¶83} Upon thorough independent review, the Court finds that the Magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the Court adopts the Magistrate's decision, with modification to reflect the Court's analysis stated herein. The Court OVERRULES all of Plaintiffs' objections. Judgment is rendered in favor of Defendant. Court costs are assessed against Plaintiffs. The clerk shall serve upon all Parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

[Cite as *Siegel v. Univ. of Cincinnati College of Med.*, 2025-Ohio-1823.]

FRANCES B. SIEGEL, Admr., etc., et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI
COLLEGE OF MEDICINE

Defendant

Case No. 2009-09531JD

Judge Lisa L. Sadler
Magistrate Holly True Shaver

JUDGMENT ENTRY

IN THE COURT OF CLAIMS OF OHIO

{¶84} Upon thorough independent review of the entire record, the Court finds that the Magistrate has properly determined the factual issues and appropriately applied the law. Therefore, Plaintiffs' objections are OVERRULED and the Court adopts the Magistrate's decision with modification to reflect the Court's analysis stated herein. Judgment is rendered in favor of Defendant. Court costs are assessed against Plaintiffs. The clerk shall serve upon all Parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

Filed April 25, 2025
Sent to S.C. Reporter 5/22/25