

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

DABIRA BRITTON, et al.

C.A. No.       30062

Appellants

v.

ALFRED CIRALDO, M.D.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CV 2020-04-1199

Appellee

DECISION AND JOURNAL ENTRY

Dated: March 2, 2022

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CARR, Judge.

{¶1} Plaintiffs-Appellants Dabira and Matthew Britton appeal the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In 2016, Dabira and Matthew Britton filed a complaint naming Defendant-Appellee Alfred V. Ciraldo, M.D. as a defendant. Dabira and Matthew Britton subsequently dismissed that case without prejudice on April 5, 2019. Dabira and Matthew Britton refiled the action on April 2, 2020. They alleged the action was timely based upon the Ohio savings statute.

{¶3} In the first count of the complaint, Dabira and Matthew Britton alleged that Dr. Ciraldo cared for Dabira Britton on November 4, 2015, and that Dr. Ciraldo was negligent in the management, care, and treatment of Dabira Britton. Dabira and Matthew Britton maintained that Dr. Ciraldo's negligence caused Dabira Britton personal injury. In the second count, Dabira and

Matthew Britton asserted that Dr. Ciraldo's negligence caused Matthew Britton to incur medical expenses for Dabira Britton, his wife, and that he also suffered a loss of consortium.

{¶4} Dr. Ciraldo filed an answer denying any wrongdoing. Dr. Ciraldo raised several affirmative defenses, including the statute of limitations and statute of repose. In January 2021, Dr. Ciraldo filed a motion for judgment on the pleadings. In it, Dr. Ciraldo argued that R.C. 2305.133(C), the statute of repose, and the recent Supreme Court decision, *Wilson v. Durrani*, 164 Ohio St.3d 419, 2020-Ohio-6827, barred the Brittons' action.

{¶5} In *Wilson*, which was decided December 23, 2020, subsequent to the refiling of the Brittons' complaint, the Supreme Court was asked to decide "whether a plaintiff may take advantage of Ohio's saving statute to refile a medical claim after the applicable one-year statute of limitations has expired if the four-year statute of repose for medical claims[, contained in R.C. 2305.113(C),] has also expired." *Wilson* at ¶ 1. Ultimately, the Supreme Court concluded that "R.C. 2305.113(C) is a true statute of repose that, except as expressly stated in R.C. 2305.113(C) and (D), clearly and unambiguously precludes the commencement of a medical claim more than four years after the occurrence of the alleged act or omission that forms the basis of the claim. Expiration of the statute of repose precludes the commencement, pursuant to the saving statute, of a claim that has previously failed otherwise than on the merits in a prior action." *Wilson* at ¶ 38.

{¶6} Dabira and Matthew Britton opposed the motion asserting that the Ohio savings statute should apply. They pointed out that a motion for reconsideration had been filed in *Wilson*, wherein it was argued, in part, that *Wilson's* holding should only apply prospectively. Dabira and Matthew Britton urged the trial court to apply *Wilson* prospectively only or to delay ruling on the motion until the Supreme Court ruled on the motion for reconsideration in *Wilson*.

Dr. Ciraldo filed a reply brief, and, in March 2021, also filed a supplemental brief detailing the ruling on the motion for reconsideration in *Wilson*. In its ruling, the Supreme Court, granted in part and denied in part the motion for reconsideration. *Wilson v. Durrani*, 161 Ohio St.3d 1453, 2021-Ohio-534. The Supreme Court expressly denied the request that the decision be applied prospectively only. *Id.*

{¶7} In July 2021, the trial court granted Dr. Ciraldo’s motion for judgment on the pleadings based on the expiration of time provided for by the statute of repose and the Supreme Court’s decisions in *Wilson*.

{¶8} Dabira and Matthew Britton have appealed, raising a single assignment of error for our review.

## II.

### **ASSIGNMENT OF ERROR**

THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS’ COMPLAINT SINCE THE HOLDING IN THE OHIO SUPREME COURT IN *WILSON V. DURRANI*, 2020-OHIO-6827[,] THAT THE OHIO SAVINGS STATUTE CANNOT BE USED TO CIRCUMVENT THE STATUTE OF REPOSE SHOULD BE APPLIED PROSPECTIVELY.

{¶9} Dabira and Matthew Britton argue in their sole assignment of error that the trial court erred in failing to conclude that the holding of *Wilson* should only be applied prospectively.

{¶10} Civ.R. 12(C) provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” “Under Civ.R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.” *Lakemore v. Schell*, 9th Dist. Summit No. 29387, 2020-

Ohio-4453, ¶ 11, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996).

{¶11} Here, Dabira and Matthew Britton do not deny that their claims arose November 4, 2015, or that their refiled complaint was filed outside the four-year statute of repose for medical claims. Instead, they argue that the trial court should have concluded that the holding of *Wilson*, 164 Ohio St.3d 419, 2020-Ohio-6827, should only be applied prospectively. Given that, they maintain the savings statute should apply to allow their claims to proceed.

{¶12} However, the Supreme Court of Ohio has already considered whether the holding of *Wilson* should only apply prospectively in the motion for reconsideration in *Wilson*. In ruling on the motion for reconsideration, the Supreme Court of Ohio specifically stated that the request that the decision be applied prospectively only was denied. *Wilson*, 161 Ohio St.3d 1453, 2021-Ohio-534. In light of the foregoing, we cannot say that Dabira and Matthew Britton have demonstrated that the trial court erred.

{¶13} Dabira and Matthew Britton's assignment of error is overruled.

### III.

{¶14} Dabira and Matthew Britton's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

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DONNA J. CARR  
FOR THE COURT

TEODOSIO, P. J.  
CALLAHAN, J.  
CONCUR.

APPEARANCES:

GARY T. MANTKOWSKI, Attorney at Law, for Appellants.

DOUGLAS G. LEAK, GREGORY T. ROSSI, and EMILY R. YODER, Attorneys at Law, for Appellee.