

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MIKE SAND,	:	APPEAL NO. C-180194
	:	TRIAL NO. A-1506694
and	:	
AMBER SAND,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
and	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
Defendants-Appellees,	:	
and	:	
UC HEALTH, et al.,	:	
Defendants.	:	

The court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This cause is before us on remand from the Ohio Supreme Court. This appeal is one of a long line of cases brought by former patients of Dr. Abubaker Atiq Durrani alleging various forms of malpractice, fraud, and negligence against Durrani, the Center for Advanced Spine Technologies, Inc., ("CAST") and associated hospitals. In or around 2008 or 2009, Mike Sand began seeing Durrani to address weakness in

his left leg. Durrani urged Sand to undergo back surgery to repair discs along his spine, or else lose the use of his leg. On April 5, 2010, Durrani performed spine surgery on Sand at West Chester Hospital. Following his surgery, Sand experienced the same leg pain he had prior to the surgery, and began experiencing back pain which severely limited his mobility. Sand decided to sue Durrani, claiming that the surgery was medically unnecessary and improperly performed.

On March 28, 2013, Sand, and his wife, Amber Sand (collectively, “the Sands”), filed a complaint against Durrani, CAST, and West Chester Hospital/UC Health in the Butler County Court of Common Pleas. The Sands raised claims against Durrani, CAST, and West Chester Hospital/UC Health for negligence, battery, intentional infliction of emotional distress, fraud, negligent credentialing, vicarious liability, spoliation of evidence, and loss of consortium, among others.

On November 25, 2015, the Sands voluntarily dismissed their complaint filed in the Butler County Court of Common Pleas under Civ.R. 41(A)(1)(a), and, on December 9, 2015, filed a similar complaint in the Hamilton County Court of Common Pleas. The Sands added more specific factual allegations based upon discovery disclosed in the Butler County case, and added a claim against Durrani for lack of informed consent and claims against CAST for vicarious liability, and negligent hiring, credentialing, supervision and retention.

Durrani and CAST, and West Chester Hospital/UC Health moved separately for judgment on the pleadings. The Sands moved to amend their complaint to elaborate on the fraud claims and to add a RICO claim. The trial court entered decisions granting the motions for judgment on the pleadings and denying the Sands’ motion for leave to amend their complaint.

The Sands appealed and this court reversed the trial court’s judgment in *Wilson v. Durrani*, 2019-Ohio-3880, 145 N.E.3d 1071 (1st Dist.). Durrani and CAST appealed this court’s decision, and the Ohio Supreme Court accepted the appeal.¹ On December 23, 2020, the Ohio Supreme Court reversed this court’s decision and remanded the cause. *Wilson v. Durrani*, 164 Ohio St.3d 419, 2020-Ohio-6827, 173 N.E.3d 448. On March 2, 2021, the court granted the Sands’ motion for reconsideration in part and limited our review on remand “solely to consider whether the repose period was tolled under R.C. 2305.15(A).” *Wilson v. Durrani*, 161 Ohio St.3d 1453, 2021-Ohio-534, 163 N.E.3d 580.

Tolling

The Sands argue that Durrani’s flight in December 2013 tolls all limitations periods as to Durrani and CAST under R.C. 2305.15(A). We recently decided this issue in *Elliot v. Durrani*, 1st Dist. Hamilton No. C-180555, 2021-Ohio-3055, and held that R.C. 2305.15(A) does toll the statute of repose found in R.C. 2305.113(C). *Elliot* at ¶ 43. R.C. 2305.15(A) provides:

When a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals self, the period of limitation for the commencement of the action as provided in sections 2305.04 to 2305.14 * * * of the Revised Code does not begin to run until the person comes into the state or while the person is so absconded or concealed. After the cause of action accrues if the person departs from the state, absconds, or conceals self, the time of the person’s absence

¹ West Chester Hospital and UC Health were dismissed as appellees in this case on June 24, 2019.

or concealment shall not be computed as any part of a period within which the action must be brought.

Durrani absconded in December 2013, less than four years after performing surgery on Sand in April 2010. Therefore, the statute of repose is tolled and does not bar the Sands' claims against Durrani. However, the same result cannot be said for the Sands' claims against CAST. *See Elliot* at ¶ 50 (“[T]he tolling provision in R.C. 2305.15(A) applies only to claims against Durrani and not to claims against CAST”). Since more than four years ran between the date of the surgery and the date of the filing of the Hamilton County complaint, any claims against CAST are barred by the statute of repose. The first assignment of error is sustained in part and overruled in part.

For the foregoing reasons, we affirm the trial court's judgment regarding the Sands' claims against CAST, but we reverse the trial court's judgment regarding the Sands' claims against Durrani and remand this cause to the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed 50% to appellants and 50% to Durrani under App.R. 24.

ZAYAS, P.J., CROUSE and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on November 10, 2021,
per order of the court _____.

Administrative Judge