

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

THERESA ROBBINSON-WOODS,	:	APPEAL NO. C-180515
	:	TRIAL NO. A-1505872
Plaintiff-Appellant,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	<i>JUDGMENT ENTRY.</i>
and	:	
CENTER FOR ADVANCED SPINE	:	
TECHNOLOGIES, INC.,	:	
Defendants-Appellees,	:	
and	:	
WEST CHESTER HOSPITAL,	:	
and	:	
UC HEALTH,	:	
Defendants.	:	

The court sua sponte removes this case 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 appeal concerns the latest in a long line of cases brought by the former patients of Dr. Abubakar Atiq Durrani alleging various forms of malpractice, fraud, and negligence against Dr. Durrani, the Center for Advanced Spine Technologies, Inc., (“CAST”) and associated hospitals. Theresa Robinson-Woods was referred to Dr. Durrani for back pain and muscle cramping in late 2008. Dr. Durrani performed an allegedly unnecessary surgery on Ms. Robinson-Woods at West Chester Hospital (“WCH”) on January 21, 2011, and implanted (without Ms. Robinson-Woods’s knowledge or consent) BMP-2. Following the surgery, Ms. Robinson-Woods’s pain and functional limitations increased.

Ms. Robinson-Woods asserts claims against Dr. Durrani for negligence, battery, lack of informed consent, intentional infliction of emotional distress, fraud, and spoliation of evidence. She asserts claims against CAST for vicarious liability for Dr. Durrani’s wrongful acts and omissions, negligent hiring, retention, and supervision, fraud, and violations of the Ohio Consumer Sales Protection Act, and against West Chester Hospital and UC Health for negligence, negligent credentialing, supervision, and retention, fraud, violations of the Ohio Consumer Sales Protection Act, and violations of the Ohio Product Liability Act. The parties agreed to dismiss WCH and UC Health from this proceeding, leaving only Dr. Durrani and CAST as relevant parties.

Ms. Robinson-Woods filed her original complaint against Dr. Durrani on February 27, 2014. She voluntarily dismissed that complaint and refiled on October 30, 2015. Subsequently, West Chester Hospital, UC Health, and Dr. Durrani filed motions for judgment on the pleadings, and Ms. Robinson-Woods filed a motion to amend her complaint to elaborate on her existing claims and add a state civil RICO claim. The trial court denied Ms. Robinson-Woods’s motion to amend the complaint and granted the motions of West Chester Hospital, UC Health, and Dr. Durrani for judgment on the pleadings. Ms. Robinson-Woods appealed the judgment on the pleadings; the appeal was stayed at the parties’ request while the motion for reconsideration in *Wilson v.*

Durrani was pending before the Ohio Supreme Court. We now decide her appeal for the first time, with the benefit of guidance from the Supreme Court.

Ms. Robinson-Woods presents four issues for review in her first assignment of error. First, she contends that Ohio’s one-year saving statute, R.C. 2305.19, enables her claims against Dr. Durrani to survive beyond the expiration of the statute of repose. The Ohio Supreme Court recently considered this issue and concluded otherwise, ruling that the saving statute “neither operates as a statute of limitations nor operates to toll the statute of limitations.” *Wilson v. Durrani*, Slip Opinion No. 2020-Ohio-6827 (“The saving statute anticipates the commencement of a new action, not the reactivation of the prior action, and it says nothing about the new action relating back to the filing date of the prior action.”). *Id.* at ¶ 28, citing *Antoon v. Cleveland Clinic Found.*, 148 Ohio St.3d 483, 2016-Ohio-7432, 71 N.E.3d 974, ¶ 24. On this authority, we reject Ms. Robinson-Woods’s first issue presented.

Second, Ms. Robinson-Woods argues that Dr. Durrani’s flight from Ohio to Pakistan tolls all limitations periods, including the statute of repose. We answered this question recently in *Elliot v. Durrani* and decided that R.C. 2305.15(A) does indeed toll the statute of repose in R.C. 2305.113(C). *Elliot v. Durrani*, 1st Dist. Hamilton No. C-180555, 2021-Ohio-3055, ¶ 43 (“Based on the plain language, purpose, and history of R.C. 2305.15(A), as well as a cohesive reading of the Revised Code, we conclude that R.C. 2305.15(A) applies to toll the four-year medical statute of repose in R.C. 2305.113(C).”). As applied to Ms. Robinson-Woods, her last surgery occurred in January of 2011. Dr. Durrani absconded in December of 2013, less than four years after the act constituting the basis of her claim. Therefore, based on the analysis of *Elliot*, we sustain Ms. Robinson-Woods’s second issue as to Dr. Durrani but not to CAST. *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”).

Third, Ms. Robinson-Woods contends that her fraud in the inducement claims are not “medical claims,” but rather are independent nonmedical fraud claims. This

argument was rejected for substantially identical claims in *Jonas v. Durrani*, 2020-Ohio-3787, 156 N.E.3d 365, ¶ 9 (1st Dist.), *rev'd on other grounds*, *Carr v. Durrani*, 163 Ohio St.3d 207, 2020-Ohio-6943, 168 N.E.3d 1188; *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 18-21 (1st Dist.); and *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 18 (1st Dist.), *rev'd on other grounds*, *Scott v. Durrani*, 162 Ohio St.3d 507, 2020-Ohio-6932, 165 N.E.3d 1268. We decline the invitation to revisit issues that are well-settled in this district.

Fourth, Ms. Robinson-Woods argues that her negligent credentialing claims are not “medical claims” under R.C. 2305.113(E)(3) and not subject to the statute of repose. This argument is squarely foreclosed by *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.); *Jonas* at ¶ 10; and *McNeal* at ¶ 19. We decline the invitation to revisit this settled law. The first assignment of error is sustained in part and overruled in part.

In her second assignment of error, Ms. Robinson-Woods argues the trial court abused its discretion in denying her motion to amend her complaint to elaborate on her independent, nonmedical fraud claim and plead a violation of Ohio’s state civil RICO statute, the Ohio Corrupt Practices Act (“OCPA”). *See* R.C. 2923.32. The trial court denied the motion as futile, characterizing the proposed OCPA claim as simply another medical claim barred by R.C. 2305.113(C). As explained above, Ms. Robinson-Woods’s fraud claim is barred by the medical malpractice statute of repose.

The portion of Ms. Robinson-Woods’s proposed amended complaint alleging her OCPA claim is nearly identical to the complaint we rejected in *Jonas*. In *Jonas*, we reiterated the principle that “conclusory statements punctuated with an incantation of the elements of the statute” will not suffice to plead a viable OCPA claim. *Jonas*, 2020-Ohio-3787, 156 N.E.3d 365, at ¶ 29. Ms. Robinson-Woods offers conclusory statements such as “CAST is an enterprise,” but “[n]owhere in the amended complaint can we discern how [s]he envisions structure, continuity, and separate existence from the corrupt practice to establish an ‘enterprise’ within the meaning of R.C. 2923.31(C).” *See id.*, citing *Morrow v. Reminger & Reminger Co., L.P.A.*, 183 Ohio App.3d 40, 2009-

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Ohio-2665, 915 N.E.2d 696, ¶ 38 (10th Dist.). Ms. Robinson-Woods’s proposed amended complaint lacks the requisite specificity to plead a state civil claim under the OCPA. *Id.*, citing *Morrow* at ¶ 27, and *Herakovic v. Catholic Diocese of Cleveland*, 8th Dist. Cuyahoga No. 85467, 2005-Ohio-5985, ¶ 16. The trial court did not err in denying the motion to amend as futile, and Ms. Robinson-Woods’s second assignment of error is overruled.

We accordingly sustain the first assignment of error as it pertains to Dr. Durrani by virtue of his abscondment. We reverse the trial court’s judgment in that respect and remand this cause for further proceedings consistent with this judgment entry. The assignments of error are overruled and the trial court’s judgment is affirmed in all other respects.

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 equally between Ms. Robinson-Woods and Dr. Durrani.

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

To the clerk:

Enter upon the journal of the court on September 17, 2021,
per order of the court_____.

Administrative Judge