

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

RACHEL JONES,	:	APPEAL NO. C-180642
	:	TRIAL NO. A-1601422
and	:	
JEFF JONES	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
and	:	
RIVERVIEW HEALTH INSTITUTE,	:	
Defendants-Appellees,	:	
and	:	
UC HEALTH, et al.,	:	
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 action is before us on remand from the Ohio Supreme Court. This appeal represents one in over hundreds of cases filed against Durrani and the area hospitals where it is asserted that he performed hundreds of improper and unnecessary surgeries over the course of several years. Rachel Jones was referred to

Durrani for back pain in 2010. Durrani performed spine surgery on Jones in January 2011 at West Chester Hospital (“WCH”). After the surgery, Jones experienced new and increased pain. Durrani performed another spinal surgery on Jones in August 2011 at Riverview Health Institute (“RHI”). Jones again experienced new and increased pain after the surgery. Ultimately, Jones and her husband filed suit in the Butler County Court of Common Pleas on May 9, 2014, for claims stemming from the surgeries. This complaint was voluntarily dismissed on November 25, 2015. Less than one year later, Mr. and Mrs. Jones filed a similar complaint in the Hamilton County Court of Common Pleas on March 10, 2016. The complaint was against Durrani, the Center for Advanced Spine Technologies, Inc., (“CAST”), RHI, WCH, and UC Health, and alleged claims for negligence, fraud, lack of informed consent, negligent credentialing, and spoliation of evidence, among others.¹ Subsequently, Durrani and CAST moved for judgment on the pleadings, and RHI moved to dismiss the complaint, each asserting that the claims against them were time-barred. The trial court agreed and granted each respective motion.

Mr. and Mrs. Jones appealed the trial court’s decision, and this court entered judgment on December 9, 2020, in *Jones v. Durrani*, 1st Dist. Hamilton No. C-180642, 2020-Ohio-5607. In the opinion, we reversed the trial court’s judgment based on our decision in *Wilson v. Durrani*, 2019-Ohio-3880, 145 N.E.3d 1071 (1st Dist.), *rev’d*, *Wilson v. Durrani*, Slip Opinion No. 2020-Ohio-6827. *Id.* at ¶ 31-32. Because we reversed the trial court’s decision on the first issue presented for review under the first assignment of error, we expressly declined to address the remaining issues presented for review in the first assignment of error. *Wilson*, 2019-Ohio-

¹ Mr. and Mrs. Jones voluntarily dismissed WCH and UC Health as defendants on June 21, 2019. Thus, they are not parties to this appeal.

3880, 145 N.E.3d 1071 at ¶ 9. Defendants-appellees appealed this court’s decision, and the Ohio Supreme Court accepted the appeal. On May 11, 2021, the Ohio Supreme Court reversed this court’s judgment on the authority of *Wilson v. Durrani*, Slip Opinion No. 2020-Ohio-6827, and remanded this matter to us “for consideration of the remaining issues.” *Jones v. Durrani*, 163 Ohio St.3d 1416, 2021-Ohio-1606, 167 N.E.3d 981.

The remaining issues for consideration under the first assignment of error are: (1) whether the repose period was tolled under R.C. 2305.15(A); (2) whether the fraud claims are “medical claims” subject to R.C. 2305.113; (3) whether the negligent-credentialing claim is a “medical claim” subject to R.C. 2305.113; (4) whether R.C. 2305.113(D)(2), the foreign-objects exception, applies to bar the statute of repose; (5) whether the doctrines of fraud or equitable estoppel apply to bar application of the statute of repose; and (6) whether revocation of Durrani’s medical license transforms the claims into nonmedical claims.

Tolling

Jones argues that Durrani’s flight in December of 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) may apply to 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 or concealment shall not be computed as any part of a period within which the action must be brought.

In this case, Jones asserts that Durrani fled the country in December 2013, less than four years after the last surgery performed on Jones by Durrani. Durrani does not dispute this allegation.² Therefore, the statute of repose is tolled and does not bar Jones's claims against Durrani because the repose period has yet to run. However, the same result cannot be said for Jones's claims against CAST. "For R.C. 2305.15(A) to apply, the person against whom the cause of action accrues must be out of state, absconded, or concealed." *Elliot* at ¶ 45. Jones does not contend that CAST is out of the state, absconded, or concealed. Therefore, the tolling provision in R.C. 2305.15(A) applies only to toll the statute of repose regarding the claims against Durrani but does not operate to toll the statute of repose regarding the claims against CAST. *See Elliot* at ¶ 50. Since more than four years ran between the date of the last surgery and the date of the Hamilton County complaint, any claims against CAST are barred by the statute of repose.

Fraud Claims

Jones argues that the trial court erred by holding that the fraud claims are "medical claims," and not independent, nonmedical fraud claims. This court has previously considered substantially the same argument and found the fraud claims to be "medical claims" subject to the statute of repose. *E.g., Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 20 (1st Dist.), *appeal not accepted*, 158 Ohio St.3d

² *See Appellees' Supplemental Brief*, 18 ("Dr. Durrani evidently left for Pakistan in December 2013.").

1436, 2020-Ohio-877, 141 N.E.3d 250; *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, ¶ 29-30, *appeal not accepted*, 164 Ohio St.3d 1420, 2021-Ohio-2923, 2021 WL 3884909; *Janson v. Christ Hospital, Inc.*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, ¶ 31. Therefore, we find no error in the trial court’s decision on this issue.

Negligent-Credentialing Claims

Jones argues that the trial court erred by finding that the negligent-credentialing claim was a “medical claim” subject to the statute of repose. This court has previously held that negligent-credentialing claims are “medical claims” under R.C. 2505.113(E)(3)(c)(ii) and are therefore subject to the statute of repose. *E.g.*, *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.), *appeal not accepted*, 149 Ohio St.3d 1406, 2017-Ohio-2822, 74 N.E.3d 464; *Crissinger v. Durrani*, 2017-Ohio-9256, 106 N.E.3d 798, ¶ 17 (1st Dist.); *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 19 (1st Dist.), *rev’d on other grounds*, 162 Ohio St.3d, 2020-Ohio-6932, 165 N.E.3d 1268; *Couch* at ¶ 22; *Janson* at ¶ 22. Therefore, we find no error in the trial court’s decision on this issue.

Foreign-Objects Exception

Jones argues that the trial court erred by ruling that the foreign-objects exception found in R.C. 2305.113(D)(2) does not apply to bar application of the statute of repose, because Durrani’s use of BMP-2 constitutes a foreign object. This court has previously considered substantially the same argument and found that, because there was no allegation that BMP-2 was meant to be removed at the conclusion of the surgery or no allegation that BMP-2 was inserted by accident, “the ‘alleged basis of the medical claim’ is not a foreign object trespassing in the body but

rather negligently-performed surgery with an improper device.” *Jonas v. Durrani*, 2020-Ohio-3787, 156 N.E.3d 365, ¶ 22, *rev’d in part on other grounds*, *Carr v. Durrani*, 163 Ohio St.3d 207, 2020-Ohio-6943, 168 N.E.3d 1188. Therefore, we find no error in the trial court’s decision on this issue.

Doctrines of Fraud and Equitable Estoppel

Jones argues that the trial court erred by finding that there is no fraud or equitable-estoppel exception to the statute of repose. This court has previously held that there is no fraud or equitable-estoppel exception to the statute of repose. *E.g.*, *Crissinger* at ¶ 24; *Freeman*, 2019-Ohio-3643, 144 N.E.3d 1067, at ¶ 13; *Couch*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, at ¶ 25; *Janson*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, at ¶ 24. Therefore, we find no error in the trial court’s decision on this issue.

Revocation of Durrani’s Medical License

Jones argues that her claims are not “medical claims” subject to R.C. 2305.113 because Durrani had his medical license revoked on March 12, 2014. We disagree. “[T]here is ‘nothing in the [statute of repose] to suggest that a medical claim based upon the medical treatment rendered by a licensed physician is suddenly transformed into a “non-medical” claim if that physician’s license is revoked years after the cause of action arose * * *.’” *Elliot*, 1st Dist. Hamilton No. C-180555, 2021-Ohio-3055 at ¶ 56, quoting *Levandofsky v. Durrani*, S.D. Ohio No. 1:18-CV-809, 2020 WL 5535872 (Feb. 26, 2020). Durrani was licensed to practice medicine when he performed the surgeries on Jones. Therefore, there is nothing to suggest that Durrani’s subsequent loss of his license in any way transformed the nature of the

claims she asserted. Therefore, we find no error in the trial court's decision on this issue. 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 Jones's claims against CAST and RHI; however, we reverse the trial court's judgment regarding Jones's 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 September 17, 2021,
per order of the court_____.

Administrative Judge