

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

OLLIE DEATON,	:	APPEAL NOS. C-190726
		C-190727
EUGENE DEATON,	:	C-190728
		TRIAL NOS. A-1700313
GEORGE HUTCHINSON,	:	A-1806460
		A-1506957
TONIA MCQUEARY	:	
and	:	<i>JUDGMENT ENTRY.</i>
JOHN MCQUEARY,	:	
Plaintiffs-Appellants,	:	
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D., et	:	
al.,	:	
Defendants,	:	
and	:	
THE CHRIST HOSPITAL,	:	
Defendant-Appellee.	:	

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). Additionally, the court grants the motion of Timothy Deaton to substitute himself, as executor of the Estate of Ollie Deaton, for Ollie Deaton (deceased) as a party in this action.

These appeals concern the latest in a long line of cases brought by the former patients of Dr. Abubakar Atiq Durrani and alleging various forms of malpractice, fraud, and negligence against Dr. Durrani, the Center for Advanced Spine Technologies, Inc., (“CAST”) and associated hospitals. This court consolidated the appeals of plaintiffs-appellants Ollie and Eugene Deaton (C-190726), George Hutchinson (C-190727) and Tonia and John McQueary (C-190728). All four plaintiffs-appellants challenge the trial court’s grant of defendant-appellee The Christ Hospital’s motion to dismiss, asserting the same four issues under a single assignment of error. But we have repeatedly ruled against plaintiffs similarly situated to these appellants on these issues in the past, and we do the same here.

The circumstances under which the plaintiffs-appellants encountered Dr. Durrani and The Christ Hospital vary. Ms. Deaton was referred to Dr. Durrani by her primary care physician and underwent an anterior cervical discectomy at The Christ Hospital in August of 2007; her husband, Mr. Deaton, asserts a claim for loss of consortium. Mr. Hutchinson sought treatment for leg tremors, tightness in his lower back, and weakness in his arm; he underwent two surgeries with Dr. Durrani at The Christ Hospital, one in mid-2008 and one in early 2009. Ms. McQueary was referred to Dr. Durrani for head and neck pain and eventually underwent ten surgeries with him, four of which took place at The Christ Hospital. Her latest surgery at The Christ Hospital was in July of 2009; her husband, Mr. McQueary, asserts a claim for loss of consortium.

Plaintiffs-appellants recount a wide variety of procedures and undesirable post-surgical outcomes. Nonetheless, all of plaintiffs-appellants’ claims have one key factor in common: they were first filed more than four years after plaintiffs-appellants’ relevant surgeries. Consequently, the trial court held that the four-year

statute of repose in R.C. 2305.113(C) had expired, which barred all of plaintiffs-appellants' claims against The Christ Hospital as untimely.

In the first issue raised by their sole assignment of error, plaintiffs-appellants contend that the trial court erred by holding that their negligent credentialing claims against The Christ Hospital are “medical claims” 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 v. Durrani*, 2020-Ohio-3787, 156 N.E.3d 365, ¶ 10 (1st Dist.), *rev'd on other grounds*, *Carr v. Durrani*, ___ Ohio St.3d ___, 2020-Ohio-6943, ___ N.E.3d ___; and *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 1231, ¶ 19 (1st Dist.), *rev'd on other grounds*, *Scott v. Durrani*, 162 Ohio St.3d 507, 2020-Ohio-6932, 165 N.E.3d 1268. We once again decline the invitation to revisit this settled law.

In the second issue raised by their assignment of error, plaintiffs-appellants urge this court to apply judicial doctrines of fraud and equitable estoppel to create an exception to the statute of repose. We have repeatedly rejected this invitation in the past and do the same here. *See Jonas* at ¶ 11; *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 24 (1st Dist.). “Where the General Assembly could have included an equitable estoppel or fraud exception (as some other states have done), but declined to do so, our job is not to supplant that authority, but rather to apply the statute as written.” *Jonas* at ¶ 11.

Next, in the third issue raised by their assignment of error, plaintiffs-appellants contend that their claims are not “medical claims,” but independent nonmedical fraud claims. This argument was rejected for substantially identical claims in *Jonas* at ¶ 9; *Freeman* at ¶ 18-21; and *McNeal* at ¶ 18. Again, we decline the invitation to revisit issues that are well-settled in this district.

Finally, in the fourth issue raised by their assignment of error, plaintiffs-appellants argue that the trial court erred in dismissing their spoliation of evidence claims. But in order to state a spoliation of evidence claim, a plaintiff must show (among other elements) that willful destruction of evidence actually disrupted their case. *See Janson v. Durrani*, 1st Dist. Hamilton Nos. C-200047, C-200048, C-200050, C-200052, C-200053, C-200054, C-200055 and C-200056, 2021-Ohio-1467, ¶ 32; *Simek v. Orthopedic & Neurological Consultants, Inc.*, 10th Dist. Franklin No. 17AP-671, 2019-Ohio-3901, ¶ 99. Here, because “all other claims brought against [The Christ Hospital] were properly dismissed * * * * plaintiffs would be unable to prove disruption of their respective cases and their spoliation-of-evidence claims would inevitably fail.” *Janson* at ¶ 32. *See Heimberger v. Zeal Hotel Group, Ltd.*, 2015-Ohio-3845, 42 N.E.3d 323, ¶ 38 (10th Dist.) (“[S]ummary judgment against a spoliation claimant is appropriate where the evidence alleged to be willfully destroyed, altered, or concealed would not have changed the result of an unsuccessful underlying case, and no other damages are alleged.”). Dismissal of plaintiffs-appellants’ spoliation of evidence claims was thus proper. *See Janson* at ¶ 32.

Having rejected each of the issues raised by plaintiffs-appellants’ sole assignment of error, we accordingly overrule that assignment of error and affirm the judgments of 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 under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

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

To the clerk:

Enter upon the journal of the court on May 26, 2021,
per order of the court_____.

Administrative Judge