

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

PRISCILLA WITTMAYER,	:	APPEAL NO. C-200206
	:	TRIAL NO. A-1706609
and	:	
DAVID WITTMAYER,	:	
Plaintiffs-Appellants,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.,	:	
WEST CHESTER HOSPITAL, LLC,	:	
and	:	
UC HEALTH,	:	
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); 1st Dist. Loc.R. 11.1.1.

This appeal represents the latest in a long line of cases by former patients of defendant Abubakar Atiq Durrani, M.D., against Durrani and defendant-appellee

The Christ Hospital (“TCH”). Plaintiffs Pricilla and David Wittmeyer appealed the trial court’s judgment, but David subsequently dismissed his appeal, leaving Priscilla as the sole remaining appellant.

In a single assignment of error, Wittmeyer argues that the trial court erred by granting TCH’s motion to dismiss her claims for negligent credentialing and fraud. Because this court has previously considered and rejected each of the issues that Wittmeyer presents for our review, we affirm the trial court’s judgment.

In the first issue presented for review, Wittmeyer argues that the trial court erred by finding that her negligent-credentialing claim against TCH was a “medical claim” subject to the statute of repose. She acknowledges that our precedent has held that negligent-credentialing claims are “medical claims” under R.C. 2305.113(E) and are therefore subject to the statute of repose. *See Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 21 (1st Dist.); *Crissinger v. Christ Hosp.*, 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*, *Scott v. Durrani*, 162 Ohio St.3d 507, 2020-Ohio-6932, 165 N.E.3d 1268; *Jonas v. Durrani*, 2020-Ohio-3787, 156 N.E.3d 365, ¶ 10 (1st Dist.), *rev’d on other grounds*, *Carr v. Durrani*, 163 Ohio St.3d 207, 2020-Ohio-6943, 168 N.E.3d 1188; *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726. We decline Wittmeyer’s invitation to overturn our precedent.

In the second issue presented for review, Wittmeyer urges us to recognize fraud and equitable estoppel exceptions to the statute of repose. We have repeatedly rejected such an invitation, and we do so again here. *See Crissinger* at ¶ 24; *Freeman v. Durrani*, 2019-Ohio-3643, 144 N.E.3d 1067, ¶ 24 (1st Dist.); *Jonas* at ¶

Next, in her third issue presented for review, Wittmeyer asserts that her claims are not “medical claims,” but independent nonmedical fraud claims that are not subject to the statute of repose. This court has rejected this argument for substantially identical claims in *McNeal* at ¶ 18, *Freeman* at ¶ 18-21, and *Jonas* at ¶ 9. We decline Wittmeyer’s invitation to revisit issues that are well-settled in this district.

Finally, in her fourth issue presented for review, Wittmeyer argues that the trial court erred by dismissing her spoliation-of-evidence claim. However, “because all other claims against TCH were properly dismissed under Civ.R. 12(B)(16)[,] * * * [Wittmeyer] would be unable to prove disruption of [her case] and [her] spoliation-of-evidence claim[] would inevitably fail.” See *Janson v. Christ Hosp.*, 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. Therefore, dismissal of the spoliation-of-evidence claim was proper. *Id.*

Having rejected each of the issues raised by Wittmeyer, we overrule her sole assignment of error and affirm the judgment 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.

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

To the clerk:

Enter upon the journal of the court on August 25, 2021
per order of the court  _____
Administrative Judge