IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

ROGER JOHNSON,	:	APPEAL NO. C-200207 TRIAL NO. A-1700329
and	:	
ANTOINETTE JEAN JOHNSON,	:	
Plaintiffs-Appellants,	:	*JUDGMENT ENTRY.*
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).

This appeal concerns 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. Plaintiffs-appellants Roger

and Antoinette Jean Johnson 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 appellants on these issues in the past, and we do the same here.

Mr. Johnson was referred to Dr. Durrani around the end of 2007 or early 2008 for pain in his lower back and right leg. Dr. Durrani quickly recommended surgery, and in January 2009, he performed a lumbar spine surgery on Mr. Johnson at The Christ Hospital. Unfortunately, Mr. Johnson's symptoms did not dissipate, leading to a subsequent surgery at another hospital. In September 2015—more than six years after his initial surgery—Mr. Johnson filed this suit against The Christ Hospital and other defendants, asserting claims for negligent credentialing, supervision, and retention, fraud, and spoliation of evidence (among others); Ms. Johnson asserted a claim for loss of consortium. The Christ Hospital responded with a motion to dismiss the suit as time-barred under R.C. 2305.113(C), which the trial court granted.

In the first issue raised by their sole assignment of error, plaintiffs-appellants contend that the trial court erred by holding that Mr. Johnson's negligent-credentialing claim against The Christ Hospital is a "medical claim" 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*, 163 Ohio St.3d 207, 2020-Ohio-6943, 168 N.E.3d 1188; 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 Mr. Johnson's 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 Mr. Johnson's spoliation-of-evidence claim. But in order to state a spoliation of evidence claim, a plaintiff must show (among other elements) that willful destruction of evidence actually disrupted his case. *See Janson v. Christ Hosp., 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, ¶ 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 Mr. Johnson's spoliation-of-evidence claim 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 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., CROUSE and **BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on August 27, 2021, per order of the court _____.

Administrative Judge