

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

JACKLEN UPCHURCH,	:	APPEAL NO. C-200384
Plaintiff-Appellant,	:	TRIAL NO. A-1700290
vs.	:	<i>JUDGMENT ENTRY.</i>
ABUBAKAR ATIQ DURRANI, M.D.,	:	
Defendant,	:	
and	:	
THE CHRIST HOSPITAL,	:	
Defendant-Appellee.	:	

This 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"). In a single assignment of error, plaintiff-appellant Jacklen Upchurch 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 Upchurch presents for our review, we affirm the trial court's judgment.

Durrani performed surgery on Upchurch in March 2009, after which Upchurch began to suffer severe pain and loss of flexibility. In September 2015, more than six years after the surgery, Upchurch filed this action against Durrani and TCH, asserting claims against TCH for negligent credentialing, fraud, and spoliation of evidence, among others. The trial court granted TCH's motion to dismiss the suit as time-barred by the four-year statute of repose in R.C. 2305.113(C).

In the first issue presented for review, Upchurch 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 Upchurch's invitation to overturn our precedent.

In the second issue presented for review, Upchurch urges us to recognize a fraud exception 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 ¶ 11.

Next, in her third issue presented for review, Upchurch 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 Upchurch's invitation to revisit issues that are well-settled in this district.

Finally, in her fourth issue presented for review, Upchurch 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)[,] * * * [Upchurch] 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 Upchurch, we overrule her sole assignment of error and affirm the judgment of the trial court.

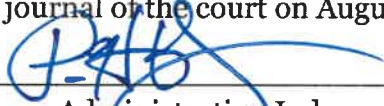
Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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

To the clerk:

Enter upon the journal of the court on August 20, 2021.

per order of the court



Administrative Judge