

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

MADISON MCLAUGHLIN,	:	APPEAL NOS. C-230202
		C-230203
Plaintiff-Appellant,	:	TRIAL NO. A-2004399
vs.	:	<i>JUDGMENT ENTRY.</i>
CINCINNATI CHILDREN’S	:	
HOSPITAL MEDICAL CENTER,	:	
RICHARD AZIZKHAN, M.D.,	:	
ALVIN CRAWFORD, M.D.,	:	
and	:	
ERIC WALL, M.D.,	:	
Defendants-Appellees,	:	
and	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
Defendant.	:	

The court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, 1st Dist. Loc.R. 11.1(C)(1), 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.

Plaintiff-appellant Madison McLaughlin appeals the judgment of the trial court granting defendants-appellees Richard Azizkhan, M.D., Alvin Crawford, M.D., and Eric Wall, M.D.’s (collectively “the Doctors”) motion to dismiss her complaint under

Civ.R. 12(B)(6).¹ Ms. McLaughlin also appeals the trial court’s judgment granting defendant-appellee Cincinnati Children’s Hospital Medical Center’s (“CCHMC”) motion to dismiss.

Ms. McLaughlin was born in 1993. When she was in eighth grade, her treating physicians diagnosed her as having stress fractures in her lower lumbar spine. She was treated with a back brace and physical therapy. Seeking a different solution, Ms. McLaughlin and her parents saw defendant Abubakar Atiq Durrani, M.D., who recommended surgery for her back. She received the surgery and later alleged it was unnecessary and that other more conservative treatments were available. She further alleged Dr. Durrani negligently performed her back surgery, resulting in persistent, debilitating pain and mental anguish.

Ms. McLaughlin turned 18 years old in 2011. Dr. Durrani fled the country in November 2013. On December 16, 2020, Ms. McLaughlin filed suit against Dr. Durrani, the Doctors, and CCHMC alleging various tort claims and statutory violations under Ohio law. The Doctors and CCHMC moved separately for dismissal of Ms. McLaughlin’s claims against them, which the trial court granted. She now appeals.

In three assignments of error, she argues that the statute of repose is tolled against CCHMC, that her negligent credentialing and civil fraud claims were not medical claims subject to the statute of repose, and that the Doctors owed a fiduciary duty to her.

This court has previously held that the tolling provision of R.C. 2305.15 does not apply to claims against Dr. Durrani’s employer based on his flight from the country. *Elliot v. Durrani*, 2021-Ohio-3055, 178 N.E.3d 977, ¶ 49-50 (1st Dist.). More recently, this court has rejected Ms. McLaughlin’s argument that our holding on this

¹ Azizkhan was the Chief of Surgery at CCHMC and a member of the Medical Executive Committee, Crawford was the Orthopedic Director at CCHMC prior to 2005 and a surgeon there through 2008, and Wall was the Orthopedic Director at CCHMC.

point in *Elliot* should be revisited in light of the holding in *Clawson v. Hts. Chiropractic Physicians, L.L.C.*, 170 Ohio St.3d 451, 2022-Ohio-4154, 214 N.E.3d 540. See *Dumais v. Cincinnati Children's Hosp. Med. Ctr.*, 1st Dist. Hamilton Nos. C-230190 and C-230191, 2024-Ohio-1022, ¶ 10 (“*Clawson* does not support [plaintiff’s argument] and we see no other authority to support such a conclusion in the context of R.C. 2305.15.”).

Further, “[t]his court has repeatedly rejected the argument that a negligent-credentialing claim arising from substantially similar circumstances is not a medical claim for purposes of the medical-claim statute of repose.” *Dumais* at ¶ 14, citing *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, ¶ 17-22; *Couch v. Durrani*, 1st Dist. Hamilton Nos. C-190703, C-190704, C-190705, C-190706 and C-190707, 2021-Ohio-726, ¶ 9-22. And we have repeatedly rejected and declined to revisit the argument that the fraud claims involved here are “independent” and not medical claims subject to the four-year statute of repose. *Dumais* at ¶ 18, citing *Janson* at 25-31; *Couch* at ¶ 28-30.

Additionally, Ms. McLaughlin argues her fraud and constructive fraud claims against the Doctors should not be barred by the statute of repose because the “last culpable act or omission” was in May 2018 when Ms. McLaughlin discovered “whistleblower” documents she asserts contain evidence of the Doctors’ fraudulent behavior. But, again, we have consistently rejected this argument. See *Dumais* at ¶ 20; *Elliot* at ¶ 53; *McNeal v. Durrani*, 2019-Ohio-5351, 138 N.E.3d 2131, ¶ 15, *rev’d on other grounds, sub. nom. Scott v. Durrani*, 162 Ohio St.3d 507, 2020-Ohio-6932, 165 N.E.3d 1268. This determination also renders moot the question of whether the Doctors owed Ms. McLaughlin a fiduciary duty.

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Accordingly, we overrule Ms. McLaughlin's assignments 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.

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

To the clerk:

Enter upon the journal of the court on April 19, 2024
per order of the court _____.
Administrative Judge