

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

JENA CLARK,	:	APPEAL NOS. C-230214
		C-230215
Plaintiff-Appellant,	:	TRIAL NO. A-2101232
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, 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); Loc.R. 11.1.

Plaintiff-appellant Jena Clark appeals the trial court’s judgment granting defendants-appellees Richard Azizkhan, M.D., Alvin Crawford, M.D., and Eric Wall,

M.D.'s (collectively "the Doctors"¹), and Cincinnati Children's Hospital Medical Center's ("CCHMC"), motions to dismiss her complaint under Civ.R. 12(B)(6).

Clark was born in 1992. In 2006, she broke her back and saw Dr. Crawford at CCHMC. He declined to perform surgery due to Clark's age. Clark received a second opinion from Dr. Abubakar Atiq Durrani, who recommended surgery. Durrani performed surgery on Clark in November 2008. Clark alleged that Durrani negligently performed the surgery because Clark's bone later broke off around two screws that Durrani had used to secure her L-5-S1 vertebrae.

Clark turned 18 years old in 2010. Durrani fled the country in November 2013. In April 2021, Clark sued Durrani, the Doctors, and CCHMC alleging various tort claims and statutory violations under Ohio law. The Doctors and CCHMC moved separately for dismissal of Clark's claims against them, which the trial court granted on statute-of-repose grounds. She now appeals.

In three assignments of error, Clark 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 previously held that the tolling provision of R.C. 2305.15 does not apply to claims against 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 Clark's argument that our holding on this 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, ¶

¹ Doctors Azizkhan, Crawford, and Wall were CCHMC surgeons with some degree of oversight responsibilities.

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, Clark 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 Clark 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 (1st Dist.), *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 Clark a fiduciary duty.

We overrule Clark’s assignments of error and affirm the trial court’s judgments.

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.

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

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the Journal of the Court on 5/22/2024 per Order of the Court.

By: _____
Administrative Judge