

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

KENNETH HAYNES,	:	APPEAL NOS. C-230216
		C-230217
Plaintiff-Appellant,	:	TRIAL NO. A-2003992
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 Kenneth Haynes 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 his complaint under Civ.R. 12(B)(6).¹ Mr. Haynes also appeals the trial court’s judgment granting defendant-appellee Cincinnati Children’s Hospital Medical Center’s (“CCHMC”) motion to dismiss.

Mr. Haynes was born in 1997. Around January 2006, his primary care physician referred him to defendant Abubakar Atiq Durrani, M.D., regarding a tumor in and around his knee. He and his family agreed to Dr. Durrani’s recommendation for surgery on his knee, which was performed in June 2006. He agreed to an additional surgery, this time for a tumor on his wrist, around June 2007. Mr. Haynes now alleges the surgeries were nonindicated, were performed negligently by Dr. Durrani, and left Mr. Haynes with serious pain and mental anguish.

Mr. Haynes turned 18 years old in 2015. Dr. Durrani fled the country in November 2013. On November 13, 2020, Mr. Haynes 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 Mr. Haynes’s claims against them, which the trial court granted on statute of repose grounds. He now appeals.

In three assignments of error, he argues that the statute of repose is tolled against CCHMC, that his 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 him.

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 Mr. Haynes’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

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.

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, Mr. Haynes argues his 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 Mr. Haynes discovered “whistleblower” documents he 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 Mr. Haynes a fiduciary duty.

Accordingly, we overrule Mr. Haynes’s assignments of error and affirm the judgments of the trial court.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

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

To the clerk:

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

By: _____
Administrative Judge