

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

MADISON WALSH,	:	APPEAL NOS. C-230229
		C-230230
Plaintiff-Appellant,	:	TRIAL NO. A-2101272
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 Madison Walsh 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).

Walsh was born in 1996. In 2008, Walsh broke her back and saw Dr. Abubakar Atiq Durrani at CCHMC. Durrani informed Walsh that she had fractured her L-4, L5 vertebrae and gave Walsh a single injection. Walsh alleges that Durrani incorrectly treated her so that Walsh's pain persisted, allowing Durrani to continue to perform unnecessary medical procedures on her. CCHMC terminated Durrani's employment in 2008 due to unethical behavior. CCHMC and the Doctors did not inform Walsh of the reasons why CCHMC terminated Durrani's employment, and Walsh followed Durrani to his next place of employment where Durrani continued to improperly treat her pain.

Walsh turned 18 years old in 2014. Durrani fled the country in November 2013. In April 2021, Walsh 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 Walsh's claims against them, which the trial court granted on statute-of-repose grounds. She now appeals.

In three assignments of error, Walsh 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 Walsh's argument that our holding on this point in *Elliot* should be

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

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, Walsh 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 Walsh 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 Walsh a fiduciary duty.

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We overrule Walsh'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.

To the clerk:

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

By: _____
Administrative Judge