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

BROOKS J. SPRADLIN-CHEEKS,	:	APPEAL NO. C-090113 TRIAL NO. A-0806328
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY.*
DAVID B. SCHWARTZ, M.D.,	:	
and	:	
DAVID B. SCHWARTZ, M.D., LLC,		
Defendants-Appellees.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Plaintiff-appellant Brooks Spradlin-Cheeks ("Spradlin") appeals the trial court's entry of summary judgment in favor of defendants-appellees David B. Schwartz, M.D., and David B. Schwartz, M.D., LLC, (collectively referred to as "Dr. Schwartz") in a medical-malpractice action. Because Spradlin filed her claims against Dr. Schwartz beyond the applicable limitations period, we affirm the trial court's judgment.

The following facts are taken from the depositions and affidavits of Spradlin, Schwartz, and Shannon Juno, M.D. In her 32nd week of pregnancy, Spradlin

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

transferred her prenatal care from her former health-care provider to Schwartz. Because of Spradlin's alleged hypertension as well as the alleged stage of dilation and effacement of her cervix, Schwartz recommended that Spradlin's labor be induced during her 38th week of pregnancy. He testified that he had explained the risks of induction and that Spradlin had given her verbal consent. But Spradlin testified that Schwartz had never informed her of the risks of induction, including the increased risk of a cesarean section, which was something that Spradlin did not desire.

Spradlin was admitted to the hospital on October 8, 2003, and signed the hospital's general consent form. She was induced with pitocin early that morning. That afternoon, Schwartz ordered a cesarean section because labor was not adequately progressing. Although Spradlin testified that she had announced to the hospital staff that she did not want a cesarean section, she could not remember if Schwartz was in the room when she stated her wishes. Eventually, the cesarean section was performed, and a healthy baby girl was born.

Several hours later, due to complications from the cesarean section, Spradlin began to hemorrhage. Schwartz and his nursing staff were unable to stop the bleeding. Unfortunately, on October 9, 2003, a hysterectomy was necessary to stop the bleeding and to save Spradlin's life. Spradlin's father signed the consent form for the hysterectomy because Spradlin was in and out of consciousness and had IV lines in both of her hands. According to Schwartz, the hemorrhaging was caused by the placenta being implanted low in the cervix.

After her two follow-up appointments with Schwartz in November 2003, Spradlin never returned to see Schwartz for medical care. In May 2005, she began gynecological care with Dr. Juno. After Spradlin discussed the birth of her daughter

and her emergency hysterectomy, Dr. Juno informed Spradlin that the induction had not been medically necessary and that if Spradlin had not been induced, it was likely that she would have had a successful vaginal delivery. Dr. Juno also discovered that a portion of Spradlin's cervix had not been removed during her hysterectomy, which was contrary to Spradlin's medical records.

In accordance with R.C. 2305.113(B), Spradlin sent a letter dated January 26, 2006, to Schwartz, indicating that she intended to sue. After receiving that letter, Schwartz supplemented Spradlin's medical record by authoring a late entry, which he dated October 2006, recording his recollection of the conversation that he had had with Spradlin regarding the risk of an elective induction.

In her complaint, Spradlin claimed that Schwartz had deviated from the standard of care in the obstetrical treatment that he had provided and that he had failed to obtain informed consent for such treatment. Further, she sought punitive damages from Schwartz for "fabricating" her medical chart by making a late entry. Dr. Schwartz moved for summary judgment, arguing that Spradlin had filed her claims outside the one-year statute of limitations. The trial court agreed and granted summary judgment in favor of Dr. Schwartz.

In her single assignment of error, Spradlin now argues that the trial court erred by entering summary judgment in favor of Dr. Schwartz.

Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed

most strongly in favor of the nonmoving party, that conclusion is adverse to that party.[2] This court reviews the granting of summary judgment de novo.[3]

Under R.C. 2305.11(B)(1), an action for medical malpractice must be brought within one year after either the cause of action accrues or the physician-patient relationship ends, whichever is later.[4] It is undisputed that Spradlin terminated her physician-patient relationship with Schwartz in November 2003. Thus, the issue before us is whether Spradlin's cause of action accrued at a later time.

"A cause of action for medical malpractice accrues and the statute of limitations commences to run when the patient discovers, or, in the exercise of reasonable care and diligence should have discovered, the resulting injury."[5] To determine the accrual date, the inquiry focuses on when there has been a "cognizable event" that does or should lead a reasonable patient to believe that the condition of which the patient complains is related to a medical procedure, treatment, or diagnosis previously rendered to the patient, and that does or should place the patient on notice of the need to purse her possible remedies.[6]

Here, Spradlin contends that her cause of action accrued in May 2005, after she had learned from Dr. Juno that her induction had not been medically necessary and that Schwartz had not obtained her informed consent to induce her. But Schwartz maintains that Spradlin's cause of action accrued the day that she had her hysterectomy—October 9, 2003.

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[2] See *State v. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.
[3] *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, ¶6.
[4] *Frysinger v. Leech* (1987), 32 Ohio St.3d 38, 512 N.E.2d 337, paragraph one of the syllabus.
[5] *Allenius v. Thomas* (1989), 42 Ohio St.3d. 131 133, 538 N.E.2d 93, quoting *Oliver v. Kaiser Community Health Found.* (1983), 5 Ohio St.3d 111, 449 N.E.2d 438, paragraph one of the syllabus.
[6] Id.

In *Laidley v. St. Luke's Med. Ctr.*,[7] the plaintiff had an emergency hysterectomy after she began to hemorrhage following the birth of her child. In determining when the statute of limitations had begun to run for purposes of a malpractice action, the Eighth Appellate District held that the plaintiff's hysterectomy had qualified as the cognizable event. The court pointed out that the plaintiff had failed to present any evidence demonstrating that she was unaware that a hysterectomy was not a normal circumstance of childbirth.

Agreeing with the analysis in *Laidley*, we hold in this case that Spradlin's hysterectomy qualified as the cognizable event that initiated the limitations period. Spradlin, like the plaintiff in *Laidley*, failed to present any evidence that she was unaware that a hysterectomy was not a normal consequence of childbirth.

Spradlin's argument that the improper medical procedure was the failure of Schwartz to obtain her informed consent, and not the actual hysterectomy, does not change our analysis. The hysterectomy was the physical injury that qualified as the cognizable event for the accrual of the cause of action. Once the physical injury was discovered, absent any fraudulent concealment by the doctor, "a reasonably prudent person ha[d] one year to determine if the injury could have been avoided or lessened, and whether[s]he had been given full and correct information."[8]

Although we have held that Spradlin "discovered" her injury on October 9, 2003, the day that she had her hysterectomy, she did not terminate her patient-physician relationship with Schwartz until November 2003. Using this later date as the start of the limitations period, Spradlin had until November 2004 to file her

[7] (June 3, 1999), 8th Dist. No. 2567.
[8] *Leon v. Miller* (June 17, 1987), 1st Dist. No. C-860487

medical-malpractice action. Because she did not file her complaint until January 2006, her action was barred because it was filed outside the statute of limitations.

Briefly, we reject Spradlin's argument that Schwartz's alleged acts of misinforming her that her induction and resultant cesarean section were medically necessary and his alleged misrepresentation that he had performed a total hysterectomy gave rise to an independent claim for fraud, and that such a claim had been timely field within the four-year statute of limitations for fraud. First, her claims regarding Schwartz's misrepresentations about the medical necessity of her induction and cesarean section were related to the need for and the performance of certain medical procedures, and they were thus inextricably tied to her medical-malpractice claim and did not give rise to an independent claim for fraud.[9] With respect to Schwartz's alleged misrepresentation that he had performed a total hysterectomy, Spradlin did not plead or argue that she had relied on that misrepresentation or that she had been harmed by that reliance—she did not allege any injury from this misrepresentation. Accordingly, she could not have maintained a claim for fraud.

Finally, we hold that the trial court also properly entered summary judgment in favor of Dr. Schwartz on Spradlin's claim for punitive damages. Under R.C. 2315.21(C)(2), punitive damages are only recoverable if the trier of fact has awarded compensatory damages. Since the statute of limitations had run on Spradlin's medical-malpractice claim, there was no award of compensatory damages. Thus, there was no basis in law for an award of punitive damages.

[9] See *Knepler v. Cowden* (Dec. 23, 1999), 2nd Dist. No. 17473; see, also, R.C. 2305.113(E)(3) (medical claim is defined as any claim that arises out of the "medical diagnosis, care and treatment of a person").

Based on the foregoing, we overrule Spradlin's single assignment of error, and the judgment of the trial court is affirmed.

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.

HILDEBRANDT, P.J., DINKELACKER and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on December 23, 2009

per order of the Court _____.

Presiding Judge