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Blackburn v. Blue Mountain Women's Clinic

12/11/1997

Rehearing Denied January 15, 1998.

Submitted November 13, 1997. Argued August 12, 1997.

In November 1995, plaintiff and appellant Amy Blackburn filed an action in the Second Judicial District Court, Silver Bow County, against the named defendants to recover damages she alleges in connection with an abortion she underwent at the Blue Mountain Clinic in Missoula on January 20, 1990. Defendants subsequently moved to dismiss Blackburn's first amended complaint on the basis that each of Blackburn's claims is barred by the applicable statute of limitations, and that certain claims must fail as a matter of law. In an order dated June 12, 1996, the court granted defendants' respective motions to dismiss. It is from that order that Blackburn now appeals. For the reasons discussed below, we affirm in part and reverse in part.

We find the following issues dispositive on appeal:

1. Did the District Court err in concluding the applicable statute of limitations barred Blackburn's claims for negligence and medical malpractice?
2. Did the District Court err in concluding the applicable statute of limitations barred Blackburn's claims for assault and battery?
3. Did the District Court err in concluding that Blackburn's 42 U.S.C. § 1983 civil rights claim is barred by the applicable statute of limitations and fails as a matter of law?
4. Did the District Court err in dismissing Blackburn's claims brought on behalf of her aborted fetus?

FACTUAL BACKGROUND

Blackburn filed her original complaint in this matter on November 29, 1995. On December 29, 1995, Blackburn filed her first amended complaint. It is from Blackburn's amended complaint that this Court takes as true the following allegations of fact.

Blackburn became pregnant in 1989 and learned soon thereafter that the father was HIV positive. Blackburn subsequently tested negative for HIV. Jan Cossel is a registered nurse employed by the City and County of Butte-Silver Bow who administered

Blackburn's HIV test. In so doing, Cossel allegedly advised Blackburn that, despite her HIV negative status, she would die within a few years and that her baby had a 50 percent chance of being born HIV positive and would likely die within two years. Cossel and another nurse allegedly urged Blackburn to have an abortion and made an appointment for her at the Blue Mountain Clinic in Missoula.

When Blackburn arrived at the Blue Mountain Clinic for her abortion, she informed a counselor at the clinic that she had tested negative for HIV, but that the father had tested positive. The counselor told Blackburn that, prior to proceeding with the abortion, Blue Mountain would require written proof of Blackburn's HIV-negative status. Cossel provided Blackburn with the requisite written statement, which Blackburn in turn gave to the clinic counselor.

Prior to the procedure, Blackburn told the Blue Mountain Clinic counselor that she was seeking an abortion only because she feared her baby would be born HIV positive. Blackburn claims neither the counselor, nor any nurse or doctor with whom Blackburn spoke at any time prior to her abortion, explained to Blackburn that an HIV negative mother could not deliver an HIV positive baby. In addition, Blackburn alleges, no one discussed with her any of the risks associated with the abortion procedure.

Accordingly, on January 20, 1990, Blackburn underwent an abortion at the Blue Mountain Clinic. Blackburn was discharged from the clinic soon after the procedure, but she experienced continued bleeding and cramping

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