

[Cite as *Harris v. Ohio State Univ. Hosp. Med. Ctr.*, 2002-Ohio-5758.]

IN THE COURT OF CLAIMS OF OHIO

PATRICIA L. HARRIS :
Plaintiff : CASE NO. 2001-11057
v. : DECISION
THE OHIO STATE UNIVERSITY : Judge J. Warren Bettis
HOSPITALS MEDICAL CENTER :
Defendant :
: :

{¶1} On August 27, 2002, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On September 23, 2002, plaintiff filed a motion to deny defendant's motion for summary judgment which the court construes as plaintiff's memorandum contra. The case is now before the court for a non-oral hearing on defendant's motion for summary judgment. Civ.R. 56(C) and L.C.C.R.4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion

and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff alleges that she developed granulomatous disease as a result of the negligent failure of defendant's surgeons to remove metal clips from her body during a surgical procedure performed on September 7, 1977. Defendant argues that plaintiff failed to timely file her complaint for medical malpractice.

{¶5} An action upon a medical claim shall be commenced within one year after the cause of action accrued. R.C. 2305.11(B)(1). A "medical claim" is defined in R.C. 2305.11(D)(3) as follows:

{¶6} "(3) 'Medical claim' means any claim that is asserted in any civil action against a physician, podiatrist, or hospital, against any employee or agent of a physician, podiatrist, or hospital, or against a registered nurse or physical therapist, and that arises out of the medical diagnosis, care, or treatment of any person. ***"

{¶7} "[u]nder 2305.11(A) a cause of action for medical malpractice accrues and the statute of limitations begins to run when the patient discovers, or, in the exercise of reasonable care and diligence should have discovered, the resulting injury. *Oliver v. Kaiser Community Health Found.* (1983), 5 Ohio St.3d 111. In *Hershberger v. Akron City Hospital* (1987), 34 Ohio St.3d 1, the Ohio Supreme Court established a three-part test to determine the

accrual of a medical claim. Under the *Hershberger* test, a medical claim accrues:

{¶8} "(1) when the injured party became aware, or should have become aware, of the extent and seriousness of his condition, (2) whether the injured party was aware, or should have been aware, that such condition was related to a specific professional medical service previously rendered him; and (3) whether such condition would put a reasonable person on notice of need for further inquiry as to the cause of such condition." *Id.*

{¶9} In her responses to defendant's interrogatories and request for admissions, plaintiff acknowledges that she had been experiencing symptoms such as sneezing, itching, pain, hives, swelling and breathing problems since 1981. Plaintiff also admits that an x-ray taken on November 28, 1999, revealed that metal clips had been left in her body. She admits that she learned about the metal clips by December of 1999, at the latest. Although plaintiff qualified her responses by stating that she did not learn the identity of the specific physicians who performed her surgery until April of 2002, there is no dispute that plaintiff became aware that the metal clips had been left in her body by December of 1999.¹ Indeed, plaintiff acknowledges in her discovery responses that when she found out that the clips had been left in her body she requested her medical records from defendant and stopped going to defendant's facility for medical care. Thus, under *Hershberger*, *supra*, plaintiff's cause of action must have accrued, at the latest, by January 1, 1999.

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Plaintiff did not submit an affidavit or any other testimonial evidence in response to defendant's motion for summary judgment.

{¶10} Applying the one-year limitations period of R.C. 2305.11, plaintiff had until January 1, 2000, to file her complaint against defendant. Plaintiff's complaint in this case was not filed until November 14, 2001, more than 22 months after her cause of action accrued. Plaintiff's complaint was untimely filed, as a matter of law.

{¶11} In short, upon review of defendant's motion for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to plaintiff, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED.

J. WARREN BETTIS
Judge

Entry cc:

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JUDGMENT ENTRY

LP/cmd

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