

SUPREME COURT OF OHIO

Antoon v. Cleveland Clinic Found.

148 Ohio St. 3d 483, 2016-Ohio-7432 (2016) · No. 2015-0467 · Decided October 25, 2016

SUMMARY

The Supreme Court of Ohio held that Ohio's medical-malpractice statute of repose, R.C. 2305.113(C), is constitutional and applies to both vested and nonvested claims. The court concluded that the plaintiffs' malpractice claims were barred because the second state-court complaint was filed more than four years after the alleged malpractice, and neither Ohio's saving statute nor 28 U.S.C. 1367 applied. The court reversed the appellate judgment and remanded with instructions to enter judgment for the defendants.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; French, J.; Pfeifer, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	October 25, 2016
DOCKET	2015-0467
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary appeal from the Eighth District Court of Appeals, which reversed the Cuyahoga County Court of Common Pleas' dismissal of the Antoons' medical-malpractice action under Civ.R. 12(B)(6).
STANDARD OF REVIEW	De novo review of a Civ.R. 12(B)(6) dismissal and de novo interpretation and constitutional review of R.C. 2305.113(C).
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Cleveland Clinic Foundation, doing business as the Cleveland Clinic, Jihad Kaouk, M.D., Raj Goel, M.D., Michael Lee, M.D. v. David Antoon, Linda Antoon

TOPICS

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QUESTIONS PRESENTED

1. Whether Ohio's medical-malpractice statute of repose, R.C. 2305.113(C), applies to claims that vested before the four-year repose period expired.
2. Whether R.C. 2305.113(C) is constitutional under Article I, Section 16 of the Ohio Constitution when it bars a vested medical-malpractice claim.
3. Whether Ohio's saving statute, R.C. 2305.19(A), or the federal supplemental-jurisdiction tolling statute, 28 U.S.C. 1367(d), preserved or tolled the Antoons' malpractice claims.

HOLDINGS

1. R.C. 2305.113(C) is a true statute of repose that applies to both vested and nonvested medical-malpractice claims; any action based on the alleged act or omission must be commenced within four years.
2. R.C. 2305.113(C) is constitutional even when it extinguishes a vested medical-malpractice cause of action.
3. A complaint dismissed without prejudice is legally deemed never to have existed, so the Antoons' second state-court complaint—not their dismissed 2010 complaint—commenced the malpractice action for purposes of R.C. 2305.113(C).
4. Neither statute preserved the Antoons' claims on the facts presented. The federal qui tam action was not substantially the same as the state malpractice action, and the malpractice claims were never pending in federal court because the district court denied leave to add them and declined supplemental jurisdiction.

KEY QUOTATIONS

“We hold that R.C. 2305.113(C) is a true statute of repose that applies to both vested and nonvested claims.”
(¶ 1)

“If a lawsuit bringing a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the basis for the claim, then any action on that claim is barred.” (¶ 23)

“We hold that Ohio’s medical-malpractice statute of repose, R.C. 2305.113(C), is constitutional even to the extent that it prohibits bringing suit on a cause of action that has vested.” (¶ 34)

FACTUAL BACKGROUND

David Antoon underwent a prostatectomy at the Cleveland Clinic on January 8, 2008, and thereafter experienced unwanted side effects and continued consultations with Clinic practitioners through December 11, 2008. The Antoons timely notified the Clinic of their intended malpractice claims and filed their first state-court action in June 2010, but dismissed it without prejudice in June 2011. Their later federal qui tam action did not assert

malpractice claims, and their second state-court malpractice complaint was filed on November 14, 2013, more than four years after the alleged malpractice.

PROCEDURAL HISTORY

The Antoons filed an initial medical-malpractice action in the Cuyahoga County Court of Common Pleas in 2010 and voluntarily dismissed it without prejudice in 2011. They later filed a federal qui tam action that did not assert medical-malpractice claims; the federal district court denied leave to add those claims and dismissed the action, and the Sixth Circuit affirmed. The Antoons filed a second state-court malpractice action in November 2013. The trial court dismissed it as untimely under the statute of limitations and statute of repose, the Eighth District reversed based on *Ruther v. Kaiser*, and the Supreme Court of Ohio reversed the appellate judgment and remanded for entry of judgment for the Clinic.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must enter judgment for the Cleveland Clinic and the individual doctors.

CASES CITED

- U.S. ex rel. Antoon v. Cleveland Clinic Found., 788 F.3d 605, 620 (6th Cir. 2015)
- *Ruther v. Kaiser*, 134 Ohio St. 3d 408, 2012-Ohio-5686, 983 N.E.2d 291
- *CTS Corp. v. Waldburger*, 573 U.S. 1, 134 S. Ct. 2175, 189 L. Ed. 2d 62 (2014)
- *DeVille Photography, Inc. v. Bowers*, 169 Ohio St. 267, 159 N.E.2d 443 (1959)
- *Kerper v. Wood*, 48 Ohio St. 613, 29 N.E. 501 (1891)
- *Townsend v. Eichelberger*, 51 Ohio St. 213, 38 N.E. 207 (1894)
- *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377
- *Opalko v. Marymount Hosp., Inc.*, 9 Ohio St. 3d 63, 458 N.E.2d 847 (1984)
- *Sedar v. Knowlton Constr. Co.*, 49 Ohio St. 3d 193, 551 N.E.2d 938 (1990)
- *Brooks v. Ohio State Univ.*, 111 Ohio App. 3d 342, 676 N.E.2d 162 (10th Dist. 1996)
- *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St. 3d 78, 676 N.E.2d 519 (1997)
- *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St. 3d 106, 2006-Ohio-954, 846 N.E.2d 478
- *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.*, 74 Ohio St. 3d 543, 660 N.E.2d 463 (1996)
- *Children's Hosp. v. Ohio Dept. of Pub. Welfare*, 69 Ohio St. 2d 523, 433 N.E.2d 187 (1982)
- *Leis v. Cleveland Ry. Co.*, 101 Ohio St. 162, 128 N.E. 73 (1920)
- *Rehor v. Case W. Res. Univ.*, 43 Ohio St. 2d 224, 331 N.E.2d 416 (1975)
- *Taylor v. First Resolution Invest. Corp.*, 148 Ohio St. 3d 627, 2016-Ohio-3444, 72 N.E.3d 573
- *Oaktree Condominium Assn., Inc. v. Hallmark Bldg. Co.*, 139 Ohio St. 3d 264, 2014-Ohio-1937, 11 N.E.3d 266

- Cook v. Matvejs, 56 Ohio St. 2d 234, 383 N.E.2d 601 (1978)
- Gregory v. Flowers, 32 Ohio St. 2d 48, 290 N.E.2d 181 (1972)
- State ex rel. Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955)
- Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co., 128 Ohio St. 3d 529, 2011-Ohio-1961, 947 N.E.2d 672
- State ex rel. Bowman v. Allen Cty. Bd. of Commrs., 124 Ohio St. 174, 177 N.E. 271 (1931)
- Singleton v. Pittsburgh Bd. of Edn., W.D. Pa. No. 2:11-cv-1431, 2012 WL 4068381