

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAMMY STAFFORD and RANDAL J. STAFFORD,	§
	§
	§ No. 319, 2003
Plaintiffs Below,	§
Appellants,	§ Court Below: Superior Court of
	§ the State of Delaware in and for
v.	§ New Castle County
	§
THE CENTER FOR NEUROLOGY, NEUROSURGERY AND PAIN MANAGEMENT, P.A., a Delaware corporation, and STEPHEN F. PENNY, M.D., ROBERT J. VARIPAPA, M.D., JOHN G. COLL, D.O., Individually, and CENTRAL DELAWARE IMAGING CENTER, INC., a Delaware corporation, d/b/a Central Delaware MRI,	§ C.A. No. 99C-07-321
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Defendants Below,	§
Appellees.	§

Submitted: February 24, 2004
Decided: May 28, 2004

Before **HOLLAND, STEELE** and **JACOBS**, Justices.

ORDER

This 28th day of May 2004, upon careful consideration of the parties' briefs, oral argument, and supplemental memoranda, it appears to the Court that:

(1) Plaintiffs below-appellants Tammy Stafford ("Stafford") and her husband appeal from an order of the Superior Court granting summary judgment in favor of the defendants based on the statute of limitations in this medical malpractice action.

(2) Between 1994 and 1998, appellant Stafford was treated four times by defendants below-appellee physicians Dr. Varipapa, Dr. Penny, and Dr. Coll, for seizures and headaches that Stafford experienced beginning in 1992.

(3) On August 19, 1994, an MRI was performed, which Dr. Varipapa interpreted as a lesion in the area of the right parietal-occipital cortex of the brain. Stafford was informed of this diagnosis at an appointment on August 22, 1994, at which Dr. Penny scheduled her for (i) a series of tests to determine the cause of the lesion and (ii) a follow-up appointment to discuss the results of the tests. Stafford cancelled the scheduled follow-up appointment. Nonetheless, Dr. Penny informed her of the results of the tests by telephone, and also prescribed a follow-up MRI to be taken in six months to track the progression of the lesion.

(4) Stafford did not submit to the follow-up MRI. Nor was she seen again by the Center for Neurology until March 27, 1997, three and one-half years later. Stafford was referred to the Center as a result of a Dover Air Force Base emergency room visit for a headache. At the March 27, 1997 appointment, Stafford was scheduled for a follow-up visit in three weeks, but she never returned to the Center for Neurology.

(5) On September 14, 1998, Stafford, then 28 weeks pregnant, suffered a grand mal seizure and was admitted to Kent General Hospital, where Dr. Varipapa happened

to be “on-call,” attending for neurology. Dr. Varipapa saw Stafford in consultation. Stafford required intensive care treatment, and was transferred the next day to Christiana Hospital because of complications related to her pregnancy. She delivered the baby by Cesarean section and, shortly thereafter, suffered a stroke. Stafford remained hospitalized until she underwent a biopsy on October 24, 1998, as a result of which it was determined that she suffered from a malignant brain tumor located in the same place as the lesion that had been identified in 1994.

(6) The Plaintiffs filed suit on July 29, 1999, alleging that the defendants had engaged in a course of continuous negligent medical treatment that began in 1994 when the MRI was read, and continued until September 15, 1998, when Stafford was transferred to Christiana Hospital.

(7) Under the continuous negligent medical treatment doctrine, where individual episodes in a course of medical treatment are so interrelated that there is no proper basis for compartmentalizing the episodes, the statute of limitations begins to run from the date of the last episode of medical negligence in the continuum of treatment.¹ The plaintiffs rely upon that doctrine as a basis to oppose the bar of

¹ *Ewing v. Beck*, 520 A.2d 653 (Del. 1987).

limitations. It is the plaintiff's burden to establish with particularity a course of continuing negligent medical treatment that occurred during a finite period.²

(8) The defendants moved for summary judgment in the Superior Court based on a statute of limitations defense. They contended that the "continuous negligent medical treatment" doctrine was inapplicable. Granting the defendants' motion, the trial court held that there was "no inexorable relationship constituting one continuous wrong," because that the episodes of treatment had been separated by time, by the nature of the complaints, and by Stafford's failure to return as directed for follow-up examinations and treatment. The trial court found further that nothing in the record supported a finding of negligence in the plaintiff's last (September 1998) treatment.

(9) After oral argument on this appeal, this Court afforded plaintiffs the opportunity to demonstrate that they had made, and supported, specific allegations of negligence regarding the September 1998 treatment. All that the plaintiffs could identify, however, was an allegation in the pretrial stipulation that Dr. Varipapa had improperly concluded that Stafford's seizure was due to hormonal changes from pregnancy and that Dr. Varipapa he had failed to review the 1994 MRI or to order another MRI. This allegation, however, was never pursued during discovery, and

² *Id.* at 662.

none of the plaintiffs' medical experts testified that the treatment provided by the defendants in September 1998 failed to meet the standard of care.

(10) We find that the trial court correctly determined that the plaintiffs failed to establish a course of continuing negligent medical treatment. The record establishes that the episodes of treatment were separated by time, by the nature of the complaints, and by the plaintiff's failure to return for follow-up care as directed.

(11) Because the discovery period is closed, and because the plaintiffs' pre-trial stipulation allegations of negligence during the September 1998 treatment are not supported by expert testimony as required by 18 *Del. C.* § 6853 and *Russell v. Kanaga*,³ those allegations cannot survive summary judgment. Accordingly, the trial court did not err in granting summary judgment to the defendants.

NOW, THEREFORE IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

³571 A.2d 724 (Del. 1990).