

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-001122-MR

LINDA BLANTON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ERNEST A. JASMIN, JUDGE  
ACTION NO. 97-CI-01007

GALEN OF KENTUCKY, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, EMBERTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant appeals from the order of the Jefferson Circuit Court granting a motion for summary judgment in favor of the appellee. After reviewing the record and applicable authorities, we affirm.

On January 31, 1996, appellant, Linda Blanton, was admitted to Suburban Hospital for treatment. On the following day, February 1, 1996, appellant received an injection which became the focus of the medical malpractice claim in this case. Appellant claims that she did not become aware of the injury and the possibility of malpractice until she was diagnosed by another

doctor on February 22 or 23, 1996. Appellant filed suit on February 21, 1997, and the circuit court dismissed the claim on a motion for summary judgment by appellee, ruling that appellant's cause of action had accrued on February 1, 1996, and that appellant had not complied with the one (1) year statute of limitations required by KRS 413.140(1)(e) and KRS 413.140(2).

It is well settled that a motion for summary judgment is appropriate when the moving party can show that there exists no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). In the case at bar, however, we are dealing with a question of statutory interpretation and KRS 413.140. The pertinent parts of KRS 413.140 indicate:

(1) The following actions shall be commenced within one year after the cause of action accrued:

(e) An action against a physician, surgeon, dentist or hospital licensed pursuant to KRS Chapter 16 for negligence or malpractice.

(2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered. . . .

This statute is a codification of the so-called "discovery rule" which was adopted in Tomlinson v. Siehl, Ky., 459 S.W.2d 166 (1970) and its progeny.

The appellant argues that she did not discover the extent of her injuries and the possibility that she had been the victim of malpractice until February 22 or 23, 1996, but the statute clearly indicates that it is the discovery of the injury (emphasis added) that triggers the running of the statute of limitations. The trial court, applying the discovery rule, concluded that appellant knew or should have known that she had been injured on February 1, 1996, and this is supported by the record. According to the record, appellant was aware that the nurses were not supposed to give injections into her hip. The record also indicates that appellant was informed by the head nurse that the injection incident "never should have happened." Further, it is undisputed that appellant began to experience pain and numbness, primarily in the lower right extremities, almost as soon as the injection was given, and the appellant continued to complain to hospital personnel that she was experiencing pain and numbness throughout the rest of the hospital stay.

Appellant argues that because there is conflicting testimony as to the time of discovery of the alleged malpractice, then the issue becomes a question for the jury under Hackworth v. Hart, Ky., 474 S.W.2d 377 (1971). A closer analysis reveals that Hackworth is very different from the case at bar.

In Hackworth, a botched vasectomy resulted in an unplanned pregnancy and an action for medical malpractice. The

Court held that the cause of action commenced to run at the time the husband discovered or should have discovered that the operation was not successful, that a jury question existed as to when the plaintiffs should have discovered that the wife was pregnant and that a jury question existed as to whether the physician was guilty of malpractice in the performance of the operation. Id.

Clearly, in Hackworth the injury resulting from the alleged malpractice was a pregnancy; therefore, plaintiffs could not have determined that the vasectomy was unsuccessful and there was an injury until they discovered that the wife had indeed become pregnant. The Court in Hackworth indicated that the jury should determine whether plaintiff husband and wife knew or should have known of the pregnancy and that a doctor, facing a malpractice case, is entitled to demand due diligence on the part of the person claiming to be aggrieved. Id. at 379, 380. Obviously, a woman cannot determine at the moment of conception that she is indeed pregnant, and the Court in Hackworth decided that a jury should determine when the plaintiffs became aware of the pregnancy and whether the plaintiffs had exercised due diligence to discover the pregnancy. Id. In the case at bar, however, it is clear from the record that appellant knew on February 1, 1996, that hospital personnel had violated instructions regarding her care and that failure to follow those instructions had resulted in physical injury and pain.

Based upon these facts, appellant's cause of action accrued on February 1, 1996, and the filing of her complaint on

February 21, 1997, was barred by the one-year statute of limitations.

Accordingly, we affirm the ruling of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Fred R. Radolovich  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Martin A. Arnett  
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