

RENDERED: OCTOBER 17, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2007-CA-002123-MR

RODERICK L. KNIGHT,  
UNDER DISABILITY,  
WITH REPRESENTATIVES,  
MR. AARON L. KNIGHT;  
MR. CEDRIC H. KNIGHT;  
AND NEXT OF FRIEND,  
MR. RICKY ELLERY

APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
ACTION NO. 07-CI-002706

UNIVERSITY OF LOUISVILLE  
KIDNEY DISEASE PROGRAM;  
DR. KAREN ERBECK, M.D.; AND  
DR. GEORGE ARONOFF, M.D.

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

STUMBO, JUDGE: In this appeal, Roderick Knight, hereinafter Appellant,  
appeals the trial court's grant of summary judgment to the University of Louisville

Kidney Disease Program, et al., hereinafter Appellees collectively. This is a medical malpractice case in which Appellant contends that the Appellees were negligent in their treatment of him and actively attempted to conceal their actions from him. The trial court granted summary judgment, holding that Appellant failed to timely name an expert witness to support his cause of action, that the action was barred by the statute of limitations, and that the Appellees were not involved in his care until after the alleged negligent acts and thus could not be held liable for his alleged injuries. Because we agree that the statute of limitations did bar this lawsuit and is, therefore, dispositive of the case, we need not address the other issues. Accordingly, we affirm.

The facts of the case are undisputed. In 1995, Appellant sought treatment for hypertension induced end-stage renal failure from Appellees. He underwent a surgery wherein a graft was implanted into his forearm to facilitate hemodialysis treatments. The graft in question was manufactured by Impra.

Apparently an infection developed at the site of the graft, requiring Appellant to undergo further operations, specifically a number of thrombectomies. All of the surgeries pertinent to this case occurred between July, 1995, and November, 1995. Appellant argues that the Impra graft was faulty, causing physical damage and resulting in unnecessary surgical procedures. Further, he argues that the graft in question had been recalled by the manufacturer some three years prior to its insertion into his arm. He essentially claims the doctors were negligent in using the Impra graft. He further argues that his medical records were

fraudulently altered to reflect that a different graft, a Gore-Tex manufactured graft, was used. This suit was filed in 2007.

As stated above, the dispositive issue in this case is that the action is barred by the statute of limitations. KRS 413.140 states:

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

\*\*\*

(e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, 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..

According to the excerpts of Appellant's medical records contained in the court record, it is clear that the use of the Impra graft and the discrepancy in the medical records was apparent on the face of the records. As the trial court correctly noted, in medical malpractice cases, "the statute begins to run on the date of the discovery of the injury, or from the date it should, in the exercise of ordinary care and diligence, have been discovered." *Hackworth v. Hart*, 474 S.W.2d 377, 379 (Ky. 1971). Product recalls and one's own medical records are readily accessible, but Appellant apparently failed to obtain that information for nearly twelve years after the Impra graft began causing him problems and the surgeries complained of were performed. We therefore agree with the trial court's finding that the statute of

limitations for this cause of action ran in 1996 and has been long barred by the statute of limitations.

For this reason we affirm the trial court's granting of Appellees' summary judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

Roderick L. Knight, *pro se*  
Louisville, Kentucky

BRIEF FOR APPELLEE:

William P. Swain  
Susan D. Phillips  
Louisville, Kentucky