

Court of Claims of Ohio

The Ohio Judicial Center
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PATRICIA L. HARRIS

Plaintiff

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

Case No. 2005-10969

Judge J. Craig Wright

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

{¶1} On August 15, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On August 28, 2006, plaintiff filed a motion to deny defendant's motion for summary judgment, which the court construes as plaintiff's memorandum contra. On September 13, 2006, plaintiff filed a motion to compel discovery. On September 25, 2006, an oral hearing was held on defendant's motion for summary judgment. On September 29, 2006, plaintiff filed a motion "for retrial on summary judgment hearing."

{¶2} Upon review, plaintiff's September 13, 2006, motion to compel and September 29, 2006, motion for "retrial" are DENIED. The case is now before the court for determination upon defendant's motion for summary judgment. See Civ.R. 56(C).

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

{¶4} "**** 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

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summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ****" See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶5} Plaintiff's claims arose as a result of a surgical procedure that was performed on September 7, 1977. Plaintiff first filed a complaint in this court on November 14, 2001, alleging medical malpractice. On October 16, 2002, the court issued a decision granting defendant's motion for summary judgment based upon the finding that plaintiff failed to timely file her complaint for medical malpractice. *Harris v. Ohio State Univ. Medical Ctr.*, Ct. Cl. No. 2001-11057, 2002-Ohio-5758.

{¶6} On October 28, 2003, plaintiff filed a second complaint alleging "fraud and deception" as a result of the 1977 surgery. The court notes that most of the facts alleged in plaintiff's second complaint are the same as those in her first complaint. On October 22, 2004, plaintiff dismissed her case by filing a notice of dismissal pursuant to Civ.R. 41(A)(1).

{¶7} On November 14, 2005, plaintiff filed another complaint that alleges fraud and deception arising out of the same surgical procedure. Defendant asserts that plaintiff's claims are barred by the doctrine of res judicata. The court agrees.

{¶8} The doctrine of res judicata holds that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 1995-Ohio-331. A dismissal due to the bar of the statute of limitations is a dismissal on the merits. It has been held that res judicata attaches when a party fails to meet the applicable statute of limitations. *LaBarbera v. Batsch* (1967), 10 Ohio St.2d 106; *Saffold v. Hillside Rehab., et al.*, Mahoning App. No. 99 CA 278, 2001-Ohio-3328.

{¶9} It is undisputed that the claims plaintiff has alleged in this case arise out of the same factual occurrences stated in her two previous complaints. Although plaintiff

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alleged fraud and deception in her October 28, 2003, and November 14, 2005, complaints, the court finds that the medical malpractice claims in her November 14, 2001, complaint arose out of the same transaction or occurrence that was the subject matter of the court's October 16, 2002, decision granting judgment in favor of defendant. Consequently, the doctrine of res judicata bars plaintiff from pursuing the same claim in this case.

{¶10} With regard to the applicable statute of limitations, generally, an action for fraud must be brought within four years after the cause thereof accrued. R.C. 2305.09(C). However, the statute of limitations for commencing actions in this court, R.C. 2743.16(A), provides that “*** civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.” The Tenth District Court of Appeals has held that R.C. 2743.16(A) applies to all actions against the state in this court and that the statute takes precedence over all other statutes of limitations provisions in the Ohio Revised Code. *Talmon v. Ohio State Lottery Commission* (Oct. 6, 1992), Franklin App. No. 92AP-693. The statute of limitations for a fraud action does not begin to run “until the fraud is discovered.” R.C. 2305.09(C).

{¶11} In her complaint, plaintiff alleges that she became aware of the alleged fraud prior to November 14, 2001. She filed her first case asserting a cause of action for fraud on October 28, 2003, and then dismissed that case by filing a notice of voluntary dismissal on October 22, 2004. Under the saving statute plaintiff had to refile her fraud claim within one year of the dismissal of her first case. Plaintiff did not file this case until November 14, 2005, more than one year after the first case was voluntarily dismissed. Therefore, the court finds that plaintiff's claims were not timely filed, as a matter of law.

{¶12} Upon review of defendant's motion for summary judgment, the memoranda filed by the parties, the arguments presented at the hearing, and construing the facts most strongly in plaintiff's favor, 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

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for summary judgment is GRANTED and judgment is rendered in favor of defendant.
Court

[Cite as *Harris v. Ohio State Univ. Med. Ctr.*, 2006-Ohio-6467.]

{¶13} costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

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