

MEDICAL MALPRACTICE PLAINTIFF CANNOT STOP THE STATUTE OF LIMITATIONS BY SIMPLY CLAIMING SHE WAS “TOO SICK” TO BRING HER LAWSUIT

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In this case, a medical malpractice plaintiff sued a hospital and doctor for performing a cardiac catheterization procedure without telling her she could develop an aneurysm and hematoma. The suit was filed past the statute of limitations deadline. Plaintiff tried to avoid this problem by submitting an affidavit in which she said she was “too sick” to bring her claim. The trial court and the court of appeals rejected the argument.

A claim accrues and the statute of limitations starts running when a reasonable person would be on notice to investigate whether the injury might result from fault. Sometimes it is difficult to discern when a reasonable person would connect an injury to a person’s fault. In such cases, accrual is a question of fact for the jury. Other times, an unexpected poor result immediately puts a plaintiff on notice that malpractice might have occurred; in these cases, the court may determine the date of accrual as a matter of law.

Here, the court said, the record left no doubt about when the plaintiff knew or should have known she might have a claim based on lack of informed consent. Plaintiff, then 80 years old, had gone to the emergency room on December 20, 2013 complaining of chest heaviness and shortness of breath. The next day, a doctor examined her and told her she needed a cardiac catheterization, which he performed on December 23. She was discharged on December 25. The next day, December 26, a nurse examined her, found subcutaneous bleeding and swelling and told her to call if her symptoms worsened. On December 27, the nurse found plaintiff had uncontrolled pain in the area around the incision. She was rushed back to the hospital, where the staff found her awake, alert and oriented. She had emergency surgery to repair an aneurysm and evacuate the hematoma in the incision area. At that point, said the court a reasonable person knew or should have known she might have a claim based on defendants’ failure to tell her these were possible aftereffects. If no one told her of these potential aftereffects ahead of time, she certainly knew no later than when they appeared. She had two years from then to file her suit.

Plaintiff did not file her suit, however, until two years and 24 days later. She tried to avoid the statute of limitations bar by claiming that she was too sick during her recuperation to consider the possible cause of her medical problems. The court rejected the argument. For the statute of limitations to be tolled for mental disability, the plaintiff must have hard evidence that she lacked the mental capacity to bring a claim based on the facts available to her; that she was unable to manage her affairs or to understand her legal rights or liabilities. Conclusory assertions that she was “unable to manage her daily affairs” cannot substitute for objective evidence that she was unable to do so. And Plaintiff did not provide any such hard evidence. In fact, the only hard evidence of her mental state was that when she returned to the hospital four days after the catheterization, she was alert, oriented and aware of the injury that had developed at the site of the procedure. The court therefore affirmed summary judgment for the Defendants on statute of limitations grounds.

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