

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DV 21-0390

RANDY LAEDEKE, and DARLA PRENN, for
THE ESTATE OF LILA M. LAEDEKE,

Plaintiffs/Appellants,

v.

BILLINGS CLINIC,

Defendant/Appellee.

APPELLEE'S RESPONSE BRIEF

On appeal from the Montana Thirteenth Judicial District Court, In and for the
County of Yellowstone, Cause No. DV-18-0323

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TABLE OF AUTHORITIES

CASES

Blackburn v. Blue Mt, Women's Clinic, 951 P.2d 1 (1997) p 6,

Wilson v. Brandt, 406 P. 3d 452 (2017) p 8

State v Martel, (1995) 273 Mont. 143, 150, 902 P.2d 14, 17. p 7

STATUTES

§27-2-205(1), MCA.

STATEMENT OF ISSUE

Appellee states the issue is whether the District Court properly granted the Defendant's motion to dismiss because Appellants did not submit their application to the Medical Legal Panel before the Statute of Limitations ran. The fact of the matter is that Appellant's submitted their application to the Medical Legal Panel well before the three years would have run after Defendant's learned of the cause of death. However, the District Court found that Plaintiff/Appellants filing a claim with the Medical Legal Panel was not complete because the District Court had not yet officially appointed Randy Laedeke and Darla Prenn as personal representatives of the Estate of Lila Laedeke. It is Plaintiff/Appellant's position that the filing of the complaint with the Medical-Legal Panel by named Personal Representatives in Decedent's Will tolled the running of the 3-year statute of limitations. The subsequent appointment by the District Court completed the filing with the Medical-Legal Panel. This would be the same as an officer of a corporation filing a complaint and then later substituting the Plaintiff with the real party in interest with the correct corporate officer.

Most important to this case, Appellant/Plaintiff's submitted a request for production of medical records to Appellee/Defendant's Hospital shortly after they received the autopsy report dated February 25, 2014 with the opinion that their mother died from Congestive Heart Failure. Appellant/Plaintiffs submitted a

request for their mother's medical records on March 3rd, 2014, dated February 28, 2014, with a Durable Power of Attorney For Health Care designating Randy Laedeke as Lila Laedeke's agent as her attorney-in-fact. [See, Exhibit A-1 signed and dated 2-28-2014 and Exhibits A 2 and 3 signed and dated August 22, 2008.]

None of the limited records produced by Appellee/Defendant Billings Clinic Hospital pursuant to the March 3, 2014, medical record production request contained any evidence that Lila Laedeke was suffering from symptoms of congestive heart failure or that such a diagnosis was made prior to her death. The documents in Appellee/Defendant's possession that showed Defendant's medical staff had indeed observed symptoms of congestive heart failure and conducted test that indicated Lila Laedeke had suffered a recent heart attack and was suffering from congestive heart failure. This information was never disclosed to Lila Laedeke or her children before or after her death even though Appellant/Plaintiffs had asked the Appellant/Defendants medical staff on several occasions if there was anything wrong with their mother's heart. The response from Appellant/Defendant's medical staff was that Lila Laedeke's symptoms were from a cold or flu she contracted while in Appellee/Defendant's Hospital.

Defendant/Appellant fraudulently concealed facts relevant to its medical malpractice until after Plaintiff/Appellants filed their complaint with the Medical-Legal Panel and the Medical Legal Panel filed a request for production of medical

records with Defendant/Appellee Billings Clinic in May 2017. The relevant medical records previously concealed were finally produced pursuant the Medical Legal Panel's request contained relevant medical records that contained evidence that Lila Laedeke was suffering from the heart condition she later died from. This Fraudulent Concealment extended the statute of limitations until Defendant disclosed the relevant medical records showing Appellant/Defendant's Hospital staff conducted testing that showed that it was probable that Lila Laedeke was suffering from congestive heart failure while in Appellee/Defendant's Hospital.

Defendant/Appellees second issue stated is whether the statute of limitations began running again and expired because Appellants failed to accomplish service of the complaint within 6 months of filing. As Defendant/Appellants know, the new service of process requirement was enacted in 2015 over a year after the death of Lila Laedeke and does not apply. The relevant time period is 3 years after the filing of the complaint pursuant to Rule 4, Montana Rules of Civil Procedure, which Plaintiff Appellants complied with.

STATEMENT OF THE CASE AND FACTS

As stated above and in Appellants' Opening Brief, this is an appeal from the Thirteenth Judicial District Court's Order granting the defendant's 12(b) motion to dismiss and dismissing Plaintiff's Complaint against defendants, which is

essentially an entry of summary judgment when there are disputed genuine issues of material fact. It is well-settled law that a motion for summary judgment can not be granted when there are disputed material issues of facts.

Appellees/Defendant's state that this case is essentially whether or not Plaintiff/Appellants filed their medical malpractice claim within the statute of limitations and whether Plaintiff's served their complaint on Defendant's within the required time. Plaintiff obviously disputes Defendant's position.

Plaintiff/Appellants position is that they filed their medical malpractice claim within the applicable three-year statute of limitations after the cause of death was determined and well within the extended statute of limitations by the Appellee/Defendants fraudulent concealment of relevant medical records showing Appellee/Defendant's medical negligence which is codified in the tolling provision in §27-2-205(1). The difference between the common law principle of fraudulent concealment tolling is that §27-2-205(1) does not require a plaintiff to prove intentional concealment. The mere failure of a medical provider to disclose its negligent acts or omissions to the patient or patient's representative. Defendant Billings Clinic's concealed the relevant medical records until it was forced to produce them in the Medical-Legal Panel Proceedings.

Plaintiff/Appellants stand by their statement of the case and facts in their opening brief with the addition of the over looked facts [or ignored facts] by

Defendant/Appellees that personal representative Randy Laedeke submitted a request for medical records to Defendant/Appellee Billings Clinic on March 3rd, 2014 dated and signed February 28, 2014, to find out what if anything Billings Clinic knew about Lila Laedeke's coronary artery disease and congestive heart failure symptoms.

It is important to note in this case that records supplied pursuant to Randy Laedeke's request for medical records on March 3, 2014, did not disclose any information regarding Lila Laedeke's coronary artery disease or congestive heart failure. Then the Defendant Billings Clinic produced additional records to the Montana Medical Legal Panel three years later in May 2017 that included records of tests performed during Lila Laedeke's last stay at Defendant's Hospital that indicated that she had suffered from a recent heart attack and she suffered from probable congestive heart failure. It is important to note that this information was previously concealed from Plaintiff/Appellants until the records were provided to the Medical Legal Panel and subsequently to Plaintiff/Appellants. It is Plaintiff/Appellants position that the applicable statute of limitations was tolled until this disclosure was made after May 2017 pursuant to the tolling provision in the last sentence in §27-2-205(1) and the Common Law tolling pursuant to the Fraudulent Concealment. [Plaintiff/Appellant has verified that Billings Clinic's Medical Records Office has these records as of this date]

STANDARD OF REVIEW

THE SUPREME COURT REVIEWS DE NOVO A DISTRICT COURT'S RULING ON A MOTION TO DISMISS UNDER Mont. R. Civ. Procedure 12(b)(6). IN REVIEWING A MOTION TO DISMISS THE COURT CONSTRUES THE COMPLAINT IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF AND TAKES THE ALLEGATIONS OF THE COMPLAINT AS TRUE.

ARGUMENT

This case turns on whether or not the statute of limitations was tolled by Billings Clinic's fraudulent concealment of relevant medical records as described above and in Appellant's opening brief pursuant to the doctrine of Fraudulent Concealment codified in the plain language of §27-2-205, MCA. **In this case the statute of limitations was tolled until after the above disclosure was made by the production of medical records after April 5, 2017, when they were supplied to the Medical Legal Panel and then to Plaintiffs.**

As a result of Defendant's fraudulent concealment of relevant medical records for three years after Appellant/Plaintiff's requested their mother's medical records the above entitled claim was timely filed with the Medical Legal Panel from February 16, 2017 through April 3, 2017 when the complaint file was deemed complete by the Montana Medical Legal Panel and then transmitted to Defendant Billings Clinic. As previously stated the statute of limitations was extended until Defendant Billings Clinic produced the medical records showing its negligence.

**THIS COURT SHOULD TAKE THIS OPPORTUNITY TO CORRECT THE
ERRONEOUS PORTION OF Blackburn v. Blue Mt. Women's Clinic, 286 Mont. 60, 75,**

**951 P.2d 1, 10 (1997), STATING IT DOES NOT APPLY TO THE THREE YEAR
STATUTE OF LIMITATIONS.**

The plain language of §27-2-205, MCA, clearly states that the time periods in this statute are tolled if the defendant has failed to disclose any act, error, or omission upon which the action is based that the defendant knew or should have known. There is nothing in the language of the statute or legislative history limiting this tolling provision to the 5 year maximum time period. [See Exhibit B, which is the original act passed by the Montana Legislator in 1971.]

The Montana Supreme Court has repeatedly stated “This Court will construe a statute in accordance with the plain meaning of its terms. State v. Martel, (1995), 273 Mont. 143, 150, 902 P.2d 14, 17. There is nothing in the statute or the legislative history that limits the tolling provision to the 5 year maximum limit to file a complaint against a negligent medical provider and this court should correct its previous rulings stating so. [See, Appellant’s Exhibit B attached, original bill CHAPTER NO. 328 from the Montana Legislative Records]

As is stated above and in Appellant’s Opening brief the delay in Defendant Billings Clinic providing requested medical records tolled the statute of limitations when the Billings Clinic concealed medical records showing it did testing that showed the patient was probable suffering from congestive heart failure and then failed to do further testing or treat the condition. These newly disclosed records showed that tests were performed at the hospital indicating Lila Laedeke had experienced a recent heart attack while in Defendant’s Hospital and was probably suffering from congestive heart failure when the hospital staff had previously

advised her symptoms were from a cold or flu and that there was no evidence of heart problems. The Defendant previous to this concealed the causal connection. These newly disclosed records provided the causal connection of Defendant's negligence and Plaintiff's mother's death.

As stated in Appellant/Plaintiff's Opening brief, it is Plaintiff's position that the statute of limitations is tolled under the first discovery rule in 27-2-205, until Plaintiff discovered the injury or cause of death and that the injury was caused by Defendant as this Court found in Wilson v. Brandt, 406 P.3d 452 (2017), 398 Mont.. 387. In Wilson the patient knew of her knee injury shortly after the Defendant Doctor performed knee surgery. She went back to the Defendant Doctor and inquired what was causing her pain. He advised it was a natural symptom of the knee surgery. She finally went to another doctor about 4 years later who told her that the doctor who performed the knee surgery caused the injury to her knee causing her pain. Over 4 years had passed before she learned her doctor drilled a hole in her knee causing her new pain. The Supreme Court reversed the District Court's Order dismissing her lawsuit and remanded her case back to the District Court with instructions that it was a jury issue to determine when she knew the doctor negligently caused her injury.

In this case Plaintiff was not made aware that Defendant's Hospital staff conducted tests until they were produced during the course of the Medical Legal Panel Proceedings, which showed Plaintiffs' mother had recently had a heart attack and was probably suffering from Congestive Heart Failure while in Defendants hospital from January 27 to February 13, 2014. Defendants hospital staff are negligent and caused the subsequent death of Lila Laedeke because they failed to advise the patient's children of her heart condition and failed to treat Lila Laedeke for the heart condition revealed by the tests.

This Court in Wilson v. Brandt, 406 P.3d 452 (2017), 398 Mont.. 387, found that the Plaintiff Wilson's statute of limitations did not begin to run until she seen another doctor 4 years later when she discovered that the Defendant doctor had injured Plaintiff's knee when he performed knee surgery 4 years earlier.

In Wilson this Court explained that the statute of limitations does not begin to run until the injured party discovers 1) the injury; and 2) that the injury may have been caused by the defendant medical provider.

This court has stated that an injured patient doesn't have a medical malpractice case unless or until the Plaintiff can prove all of the elements. It is well settled Montana law that the plaintiff in a medical malpractice action must establish the following elements: (1) the applicable standard of care, (2) the defendant departed from that standard of care, and (3) the departure proximately caused plaintiffs injury. Gratton, 169 Mont. at 189-90, 545 P.2d at 672.

The statute of limitations should be tolled while the Defendant medical provider conceals or otherwise fails to disclose facts supporting these elements as in this case.

.....

CONCLUSION

As evidenced by the arguments and authorities advanced above; The district court in this case erred in granting Defendant's 12(b)(6) Motion to Dismiss.

Therefore, the trial court's rulings outlined above should be reversed.

Respectfully submitted this 22 day of June, 2022.

Randy S. Laedeke
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By



Randy S. Laedeke


I hereby certify that I caused a true and accurate copy of the foregoing Opening Brief of Appellant to be delivered by U.S. First Class Mail, postage prepaid, to: Counsel for Defendants and Appellee

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DATED: 22nd day of June, 2022

By 
Randy S. Laedeke

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 12 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is not more than 5,000 words, excluding certificate of service and certificate of compliance.

By 
Randy S. Laedeke