

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ROSE KOEHLER,	:	APPEAL NO. C-180204
	:	TRIAL NO. A-1504135
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ABUBAKAR ATIQ DURRANI, M.D.,	:	
	:	
CENTER FOR ADVANCED SPINE	:	
TECHNOLOGIES, INC.,	:	
	:	
THE CHRIST HOSPITAL, INC.,	:	
	:	
and	:	
	:	
CHILDREN’S HOSPITAL MEDICAL	:	
CENTER,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee Rose Koehler appeals decisions of the trial court (1) granting motions to dismiss filed by defendants-appellees The Christ Hospital, Inc. (“Christ”) and Children’s Hospital Medical Center (“Children’s”), (2) granting motions for judgment on the pleadings filed by defendants-appellees, Abubakar Atiq Durrani and Center for Advanced Spine Technologies, Inc., (“CAST”), and (3) denying Koehler’s motion to amend her complaint. We find no merit in her two assignments of error, and we affirm the trial court’s judgments.

The record shows that Durrani performed spinal surgery on Koehler on March 26, 2008, and February 25, 2009. She contends that the surgeries were medically unnecessary and that Durrani performed them improperly, causing her to suffer severe back and neck pain.

Koehler filed a complaint against appellees on July 18, 2014, which she later voluntarily dismissed. She filed a new complaint on August 4, 2015. In her complaint, she set forth numerous causes of action, including medical malpractice, battery, lack of informed consent, fraud, violations of the Ohio Consumer Sales Practices Act, negligent credentialing and supervision, and product liability.

In their motions to dismiss and for judgment on the pleadings, appellees argued that Koehler's claims were barred by the four-year statute of repose set forth in former R.C. 2305.113(C)(1). The trial court found their arguments to be meritorious, granted their motions, and dismissed the action.

In her first assignment of error, Koehler contends that the trial court erred in granting the appellees' motions to dismiss and for judgment on the pleadings. First, she argues that the four-year statute of repose in former R.C. 2305.113(C) should be subject to exceptions for fraud and equitable estoppel. We have previously rejected that argument because the legislature could have included those exceptions and declined to do so. *See Freeman v. Durrani*, 1st Dist. Hamilton No. C-180197, 2019-Ohio-3643, ¶ 7-13 (1st Dist.); *Crissinger v. The Christ Hosp.*, 2017-Ohio-9256, 106 N.E.3d 798, ¶ 23-24 (1st Dist.).

Next, Koehler argues that her fraud claims are independent claims and not "medical claims" for purposes of the statute of repose. Former R.C. 2305.113(E)(3) defined medical claims as "[c]laims that arise out of the medical diagnosis, care, or

treatment of any person” and “[d]erivative claims for relief that arise from the medical diagnosis, care, or treatment of a person.”

The language of the complaint shows that Koehler’s fraud claims arose out of her medical diagnosis, care and treatment. Thus, they fall within the definition of a medical claim as defined in the statute of repose. *See Freeman* at ¶ 14-24; *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 18-25 (1st Dist.). “[T]he statute’s definition of a ‘medical claim’ does not permit us to split a fraud theory involving medical treatment off from a professional negligence claim involving medical treatment.” *Harris v. Ohio State Univ. Hosp. Med. Ctr.*, 10th Dist. Franklin No. 06AP-1092, 2007-Ohio-1812, ¶ 10.

Because Koehler’s claims were barred by the statute of repose, she can show no set of facts that would entitle her to relief. Therefore, the trial court did not err in granting Durrani’s and CAST’s motions for judgment on the pleadings or in granting Christ’s and Childrens’s motions to dismiss. *See Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 11; *State ex rel. Findlay Publishing Co. v. Hancock Cty. Bd. of Commrs.*, 80 Ohio St.3d 134, 136, 684 N.E.2d 1222 (1997); *Eward v. The Christ Hosp.*, 141 Ohio App.3d 572, 575, 752 N.E.2d 326 (1st Dist.2001). Consequently, we overrule Koehler’s first assignment of error.

In her second assignment of error, Koehler contends that the trial court abused its discretion by denying her motion for leave to file an amended complaint. We review the denial of leave to amend a pleading for an abuse of discretion. *Patterson v. V & M Auto Body*, 63 Ohio St.3d 573, 576, 589 N.E.2d 1306 (1992); *Freeman*, 1st Dist. Hamilton No. C-180197, 2019-Ohio-3643, at ¶ 26. While Civ.R. 15(A) provides that leave to amend should be granted freely, a trial court may properly refuse to grant leave when an amendment would be futile. *Freeman* at ¶ 27; *Young* at ¶ 14.

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Koehler sought to include additional details supporting her claims for fraud and equitable estoppel. She also sought to add a claim under the Ohio Corrupt Activities Act in R.C. 2923.31 et seq. All of the new allegations still arise out of her medical diagnosis, care and treatment, and thus are still subject to the four-year statute of repose. Therefore, to allow Koehler to amend her complaint would have been futile. *See Freeman* at ¶ 27; *Young*, 2016-Ohio-5526, 61 N.E.3d 34, at ¶ 18-25; *Hensley v. Durrani*, 1st Dist. Hamilton No. C-130005, 2013-Ohio-4711, ¶ 14-20.

Under the circumstances, we cannot hold that the trial court abused its discretion in overruling Koehler's motion for leave to amend her complaint. Consequently, we overrule her second assignment of error and affirm the trial court's judgments.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on October 11, 2019
per order of the court _____.
Presiding Judge