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Ohio Supreme Court rules that the savings statute cannot save a late second filing

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The Ohio Supreme Court (Supreme Court) rejected an attempt to use Ohio's savings statute to resurrect a medical malpractice claim that the Plaintiff had failed to timely serve on one of three Defendants. In [Moore v. Mount Carmel Health System¹](#), Plaintiff claimed that he had been unable to locate the Defendant doctor to serve him with the lawsuit until after the statute of limitations ran and, thus, was entitled to extra time under Ohio's savings statute. The Supreme Court disagreed, and held that the savings statute could not be relied upon to revive the Plaintiff's claim because he had failed to serve his lawsuit on the Defendant doctor under the Ohio Rules of Civil Procedure. Because the Plaintiff failed to commence his claim against the Defendant doctor under the Civil Rules' time limit, the savings statute's conditions remained unsatisfied and the savings statute did not apply.

The Supreme Court's opinion addresses the interplay among the one-year statute of limitations for medical malpractice lawsuits². The statute of limitations for a medical malpractice claim in Ohio is one year, but it can be extended by six months with proper notification to defendants. In the present case, Plaintiff provided proper notification, so the filing deadline was extended to July 7, 2015. Plaintiff filed the original complaint one day before the filing deadline and requested the court serve the complaint on all three Defendants. To "commence" the action under Civ.R. 3(A),

Plaintiff was required to serve all Defendants within one year of filing the lawsuit. However, he failed to do so.

After the one-year period to commence the action by serving the Defendant doctor passed, all of the Defendants moved for summary judgment, arguing that Plaintiff missed the deadline under Civ.R. 3(A) and, as a result, his case had not commenced. Shortly after the Defendants moved for summary judgment, Plaintiff successfully served the Defendant doctor. The common pleas court granted the Defendants' motion and dismissed the case with prejudice, barring the Plaintiff from further pursuing his claim. By neglecting to timely serve the Defendant doctor, Plaintiff failed to meet one of the savings statute's conditions.

Plaintiff appealed to the Tenth District Court of Appeals, which ruled that the savings statute provided Plaintiff with additional time to file his complaint, as the original case was filed in 2015, prior to the expiration of the statute of limitations. The Tenth District treated Plaintiff's second attempt at service as a voluntary dismissal and refiling of the case, prior to the trial court's decision against him. The Tenth District permitted the attempt at service after the commencement period and statute of limitations period had run to operate as a new opportunity for the Plaintiff to benefit from the savings statute. The Defendants appealed the Tenth District's decision to the Supreme Court.

The majority decision, written by Justice DeWine, explained that R.C. 2305.19(A) states that if a case is commenced, and fails for a reason other than the merits, then the Plaintiff may refile the case within one year. However, because Plaintiff failed to timely serve the Defendant doctor, he never commenced the case. The majority further opined that the Tenth District erroneously treated the second attempt at service as a voluntary dismissal and refiling of the original case, under *Goolsby v. Anderson Concrete Corp*³. The Court's decision clarifies that *Goolsby* only applies in cases where the second attempt to serve a Defendant occurs before the running of the statute of limitations. Thus, in the present case, the Supreme Court found Plaintiff waited too long to serve the Defendant doctor; because Plaintiff never timely commenced his case, he could not use the savings statute to re-file outside of the statute of limitations.

Justices Stewart and Donnelly dissented, writing that the majority incorrectly assumed that failing to commence a case within the statute of limitations automatically bars a case from moving forward. In the dissenting Justices' view, the trial court should have dismissed the case without prejudice on failure of service grounds. If that had happened, then the Plaintiff could have used the savings statute.

This decision serves as a cautionary tale for plaintiffs and confirms the imperative of timely serving defendants in order to properly commence an action. Only then can a plaintiff take full advantage of the savings statute's protection.

[1] Moore v. Mount Carmel Health System, Slip Opinion 2020-Ohio-4113 (Aug. 20, 2020).

[2] (R.C. 2305.113(A)), Ohio Rule of Civil Procedure 3(A), and Ohio's savings statute (R.C. 2305.19(A)).

[3] 61 Ohio St.3d 549, 575 N.E.2d 801 (1991).