

**FILED**

**MAY 16 2003**

**STATE OF VERMONT  
WASHINGTON COUNTY, SS.**

**SUPERIOR COURT  
WASHINGTON COUNTY**

**TRACY ISABELLE**

v.

**STEPHEN J. CRADDOCK**

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**Washington Superior Court  
Docket No. 587-10-00 Wncv**

**Defendant's Motion for Summary Judgment, filed June 29, 2001, renewed April 29, 2003**

Oral argument on the above motion took place on May 13, 2003. Plaintiff was present and represented by L. Brooke Dingleline, Esq. and Oreste V. Valsangiacomo, Esq. Defendant was present and represented by Kirsten A. Beske, Esq. The parties agreed that for purposes of this motion, the facts set forth in their papers, including the original motion as well as the renewed motion and all responses and replies, were either undisputed or to be viewed in the light most favorable to the Plaintiff.

Defendant claims that all undisputed facts, viewed favorably to the Plaintiff, demonstrate that Plaintiff had an opportunity to bring a medical malpractice suit after she and the Defendant ended their attorney-client relationship, and that any failure to file within the statute of limitations period is attributable to successor counsel and not to him; thus, Defendant argues, Plaintiff cannot prove the element of causation as to Defendant, and Defendant is therefore entitled to summary judgment.

Based on the facts presented, this reasoning does not apply to Plaintiff's claim of loss of opportunity to sue Rebecca Singer and Dr. Starr, since it is clear that any suit against either of them had to be filed no later than December 16, 1999. Causation as to loss of opportunity to sue them cannot be attributable to successor counsel, but only to Defendant, who advised Plaintiff on December 2, 1999 that she had until July 2000 to bring suit. Thus, Defendant's motion is denied as to any claim for lost opportunity to sue Rebecca Singer and Dr. Starr.

With respect to Plaintiff's claim of lost opportunity to sue Dr. Knowlton or any doctor from Associates in Obstetrics and Gynecology (hereinafter OB/GYN), Defendant's argument that Plaintiff cannot prove causation against Defendant is predicated on the establishment of each of the following facts:

-the statute of limitations did not expire until June 10, 2000

*This is only true if either the continuing treatment or continuing negligence doctrine is used to measure the statute of limitations as starting on June 10, 1997, the last day Plaintiff's breast was checked by a doctor from OB/GYN.*

-any claim that accrued on June 10, 1997 was part of a continuum that reached back to December 13, 1996, the date on which Plaintiff notified OB/GYN of a lump, or to December 31, 1996, the date on which Dr. Knowlton first evaluated her breast lump

*This is only true if either the continuing treatment or continuing negligence doctrine applies to permit reaching back to December 13, 1996, or December 31, 1996.*

-Plaintiff can recover against any doctor in the OB/GYN group in full for all damages as of December 13, 1996 or December 31, 1996

*This is only true if each doctor at OB/GYN has full joint and several liability with all doctors whom Plaintiff saw from December 13, 1996 or December 31, 1996 through June 10, 1997.*

Defendant argues that since all of these are statements of law or undisputed facts, looking at the facts most favorably to the Plaintiff, Plaintiff had until June 10, 2000 to file suit, and any failure to file suit after Defendant ended his relationship with Plaintiff in December of 1999 cannot be attributable to him, and as a consequence Plaintiff cannot prove the element of causation in her claim against the Defendant.

The key question in the analysis is whether either the continuing treatment or continuing negligence doctrines apply such that the statute of limitations period commenced on June 10, 1997 rather than some earlier date. If Defendant was correct about this when he gave Plaintiff advice in December 1999, then any failure to sue within the statute of limitations period cannot be deemed to be caused by Defendant, and Plaintiff cannot prove causation.

On the undisputed facts in this case as developed so far for purposes of this motion, neither the continuing treatment nor the continuing negligence doctrines are applicable for the following reasons:

As to continuing treatment, the facts do not support that Plaintiff was receiving continuous treatment for an original medical complaint that is the basis of her cause of action against OB/GYN. Between December 31, 1996 and June 10, 1997, Plaintiff had a series of prenatal visits related to her pregnancy. On each occasion (taking the facts most favorably to Plaintiff), she complained of a lump in her breast, and her breast was checked, but the basis for her continuing medical treatment was prenatal visits related to her pregnancy; she was not being treated for the condition of a breast lump. She made a new request each visit for a consultation with respect to her breast, but it was not the reason monthly appointments were made. Therefore, neither of the policy reasons for the continuing treatment doctrine apply: (1) it is not the case that each visit was part of an overall treatment that took place in a series such that no one event can be deemed an act of negligence and only the aggregate constitutes negligence, and (2) the treating doctors were not having her come back for a series of appointments in order for them to follow the progress of her breast lump condition. They were "treating" her pregnancy, not her

complaints of a lump in her breast.


Similarly, the application of the continuing negligence doctrine is not supported by the facts. The alleged medical malpractice is failure to refer to a surgeon or other specialist for evaluation of the breast lump. Each time she made a complaint of a lump in her breast, she was seeking a consultation with the doctor she saw, and each time, the doctor she saw had the opportunity to make a fresh decision as to whether to refer her to a surgeon or other specialist for evaluation of her breast condition. The harms can be segregated, as each is a separate event giving rise to a separate cause of action, and each event may allegedly give rise to a different level of damages. Thus, it is not necessary to extend the statute of limitations period to the last act in a series of related acts in order to accomplish the policy goals of the statute of limitations, because each occasion of alleged negligence can be evaluated separately on its own merits. A separate statute of limitations period was started as to each consultation on the day of that consultation.

While it is true that Defendant's advice could not be the cause of Plaintiff's failure to file a medical malpractice action based on appointments in April or May or June of 1997 (for which the statute of limitations would run as of April, May, and June of 2000, after successor counsel was retained), Plaintiff has alleged that Defendant's advice caused her to lose the opportunity to bring suit for medical negligence for the critical December 31, 1996 appointment, the first time her breast was evaluated pursuant to her complaint, and a date as of which her damages, if proven, may be greatest. Defendant advised her on December 2, 1999 that she had until July 2000 to bring suit. Her failure to sue before December 31, 1999 for the December 31, 1996 alleged negligence therefore cannot be attributable to successor counsel. The court cannot rule as a matter of law that there was an intervening cause that makes Plaintiff unable to prove causation as to Defendant as to that consultation and others that occurred before March of 1997, three years prior to successor counsel being retained in March of 2000.

It is unnecessary for this court to make a ruling that the continuing treatment or continuing negligence doctrines would never be applied as an interpretive gloss on the Vermont statute of limitations, but as of the date Defendant gave Plaintiff advice on December 2, 1999, the Vermont Supreme Court had never ruled that either of these doctrines would be applied in interpreting the applicable Vermont statute of limitations. Moreover, as described herein, the specific undisputed facts of this case as presented for purposes of this Motion for Summary Judgment do not call for the application of either of these doctrines.

For the foregoing reasons, the Defendant's Motion for Summary Judgment is *denied*.

Date at Montpelier, Vermont this 16th day of May 2003.

  
Hon. Mary Miles Teachout  
Presiding Judge