

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947

January 26, 2010

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**RE: The PMA Insurance Company, et. al. v. Santosh Reddy, M.D.
C.A. No. S08C-11-006-ESB
Letter Opinion**

Date Submitted: October 2, 2009

Dear Counsel:

This is my decision on Defendant Santosh Reddy, M.D.'s Motion for Summary Judgment in this case involving a claim for contribution filed against him by Plaintiffs The PMA Insurance Company and CNA Insurance Company, as subrogees of Harbor Health Care & Rehabilitation Center, Inc. This case arose out of the death of Nickicolma Spriggs and the litigation that followed her death. Spriggs was a patient at Harbor Health in Lewes, Delaware. Dr. Reddy was her attending physician for six years. Spriggs died on November 26, 1998. The Personal Representative of the Estate of Nickicolma Spriggs filed a lawsuit in the District of Columbia against Harbor Health on November 21, 2001. Dr. Reddy was not a party to that lawsuit. Harbor Health and its two insurance carriers settled the lawsuit

for \$725,000 on November 28, 2006. The Plaintiffs then filed this action against Dr. Reddy to force him to pay his pro-rata share of the settlement. Dr. Reddy argues that the Plaintiffs' complaint is barred by the medical negligence statute of limitations.¹ I have concluded that the medical negligence statute of limitations does not bar the Plaintiffs' complaint because it does not apply to an action for contribution.

BACKGROUND

Spriggs was born two months premature with serious health problems. She suffered from hypoxic encephalopathy and severe cerebral palsy. Spriggs was also a spastic quadriplegic and profoundly mentally retarded. She was a ward of the District of Columbia. The District of Columbia had contracted with Harbor Health to provide health care services to Spriggs. Spriggs was transferred from the District of Columbia to Harbor Health's facility sometime in early 1992.

While at Harbor Health, Spriggs was evaluated in 1992 by two doctors at the Nemours/Alfred I. duPont Institute Hospital for Children. These doctors noted that Spriggs was suffering from scoliosis and ordered that she be returned to the hospital in six months and every six months thereafter to obtain x-rays of her spine and pelvis in order to monitor her condition.

Dr. Reddy became Spriggs' attending physician when she was admitted to Harbor Health. He saw her at the facility on a weekly basis. Dr. Reddy did not provide any medical care to Spriggs in the District of Columbia. He only treated her in Delaware. Despite the order of the two doctors at the Nemours/Alfred I. duPont Institute Hospital for

¹ 18 Del.C. § 6856.

Children to have Spriggs brought in every six months, Spriggs was not brought back. Spriggs died on November 26, 1998.

The Personal Representative of the Estate of Nickicolma Spriggs filed a survival action against Harbor Health in the Superior Court for the District of Columbia on November 21, 2001. A central allegation against Harbor Health was that it failed to return Spriggs to the Nemours/Alfred I. DuPont Institute Hospital for Children every six months for evaluation and assessment of her scoliosis. The lawsuit alleged that as a result of Harbor Health's negligence, Spriggs died. No claims were brought in the District of Columbia under Delaware law or against Dr. Reddy.

The lawsuit was filed in the District of Columbia in time because Spriggs was a minor throughout the relevant time period and, as such, was under a disability tolling the accrual of her causes of action against Harbor Health up to and including the time of her death. The applicable statute of limitations in the District of Columbia was three years. Jurisdiction in the District of Columbia was based primarily on the contract between the District of Columbia and Harbor Health, which was entered into in the District of Columbia, as well as the fact that Harbor Health transacted business in the District of Columbia, and that the District of Columbia was the location of the plaintiff's residence.

Harbor Health settled with the Personal Representative of the Estate of Nickicolma Spriggs for \$725,000.00 on November 28, 2006. A release was executed in connection with the settlement agreement preserving the Plaintiffs' claim for contribution against Dr. Reddy as a joint tort-feasor.

The Plaintiffs filed a claim for contribution against Dr. Reddy on November 5, 2008. The Plaintiffs seek contribution on the grounds that Dr. Reddy was negligent in his care of

Spriggs in that he failed to develop and keep a comprehensive problem list reflecting Spriggs' condition, including the potential for advancing scoliosis, failing to carefully monitor and document Spriggs' scoliosis condition from 1992 through 1998, and failing to follow the recommendations of the two doctors at the Nemours/Alfred I. duPont Institute Hospital for Children that Spriggs be brought in every six months for assessment of her scoliosis.

STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.² Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ The Court views the evidence in a light most favorable to the nonmoving party.⁴ Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁵ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.⁶ If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Id.* at 680.

⁵ *Super. Ct. Civ. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁶ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

to enable it to apply the law to the facts before it, then summary judgment is not appropriate.⁷

DISCUSSION

Dr. Reddy argues that the Plaintiffs' action for contribution is barred by the medical negligence statute of limitations, which states that:

“No action for the recovery of damages upon a claim against a health care provider for personal injury, including personal injury which results in death, arising out of medical negligence shall be brought after the expiration of 2 years from the date upon which such injury occurred.”

Dr. Reddy has misunderstood both the nature of an action for contribution and the application of the medical negligence statute of limitations. Contribution is defined as the right of one who has discharged a common liability to recover from another who is also liable.⁸ Under principles of “contribution,” a joint tort-feasor against whom a judgment is rendered is entitled to recover proportional shares of the judgment from the other joint tort-feasors whose negligence contributed to the injury and who were also liable to the plaintiff.⁹ The right of contribution has been codified in the Uniform Contribution Among Tort-Feasors Law.¹⁰ For the purposes of this law, “joint tort-feasors” means “2 or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment

⁷ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁸ Black's Law Dictionary 329 (7th ed. 1999).

⁹ *Id.*

¹⁰ 10 Del.C. § 6301.

as been recovered against all or some of them.”¹¹ The right of contribution exists among joint tort-feasors.¹² A joint tort-feasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his or her pro-rata share thereof.¹³

The medical negligence statute of limitations, by its plain language, applies only to a personal injury action arising out of the medical negligence of a health care provider. An action for contribution has always been held to be separate and distinct from an action for personal injury.¹⁴ “Medical Negligence” is defined in the statute as “any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to a patient. The Plaintiffs are subrogees of Harbor Health. As such, they stand in the place of Harbor Health. Harbor Health is not asserting a claim against Dr. Reddy for personal injuries arising out of his care of Spriggs. Spriggs was Dr. Reddy’s patient and she had that claim. Harbor Health’s claim is based on the fact that it allegedly paid more than its proportional share to settle the claim filed against it by the Personal Representative of the Estate of Nickicolma Spriggs. This limitation on the application of the medical negligence statute of limitations has also been

¹¹ *Id.*

¹² 10 Del.C. § 6302(a).

¹³ 10 Del.C. § 6302(b).

¹⁴ *Shinault v. Nationwide Mutual Insurance Company*, 1995 WL 270089, at * 1 (Del. Super. March 13, 1995); *Royal Car Wash Co., v. Mayor and Council of Wilmington*, 240 A.2d 144 (Del. Super. 1968); *Goldsberry v. Frank Clendaniel, Inc.*, 109 A.2d 405 (Del. Super. 1954).

recognized.¹⁵

The right to contribution is an action based on a statute. Thus, the applicable statute of limitations is 10 Del.C. § 8106(a). This is subject to a number of exceptions, but the medical negligence statute of limitations is not one of them. Section 8106(a) requires an action for contribution to be filed within three years from the date it accrues. An action for contribution accrues when a joint tort-feasor has by payment discharged the common liability or paid more than his or her pro rata share thereof.¹⁶ The Plaintiffs settled with the Personal Representative of the Estate of Nickicolma Spriggs on November 28, 2006. The Plaintiffs filed their complaint against Dr. Reddy on November 5, 2008, well within the applicable statute of limitations.

CONCLUSION

Defendant Santosh Reddy, M.D.'s Motion for Summary Judgment is denied for the reasons set forth herein.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office

¹⁵ *Azarbal v. Medical Center of Delaware, Inc.*, 724 F. Supp. 279 (D. Del. 1989).

¹⁶ *Id.*; *Hall v. Hickman*, 1987 WL 17176, at *4 (Del. Super. Sept. 8, 1987).