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Children's Claims Tossed In Fla. Mother's Med Mal Suit

By **Y. Peter Kang**

Law360 (July 22, 2020, 10:33 PM EDT) -- A Florida appeals court on Wednesday affirmed the dismissal of parental consortium claims in a suit accusing a radiologist and others of injuring a woman due to medical malpractice, saying the minor children's claims lodged in an amended complaint are new causes of action that were filed too late.

A three-judge Court of Appeal panel for the Third District upheld the dismissal of claims lodged by Stacey Castro's three minor children in a suit accusing Dr. Italo Linfante, his practice group, Radiology Associates of South Florida PA and Baptist Hospital of Miami Inc. of causing Castro's unspecified injuries due to negligent medical care provided between February 2011 and September 2012.

The suit was filed in July 2015 but was amended in April 2019 to include the children's claims that due to the health providers' negligence, they have been deprived of the normal benefits a child receives from a parent, such as loss of companionship. The Miami-Dade County judge tossed the claims, finding that they were filed after the expiration of the two-year statute of limitations.

On appeal, Castro argued that because the children's claims "arose out of the same negligent conduct as alleged in the initial complaint," the "relation back" doctrine should apply. In Florida, the doctrine allows a litigant to add a new claim in an amended complaint so long as it relates back to the allegations in the original complaint.

The panel shot down Castro's argument, saying Florida case law has held that loss of consortium claims lodged by either a spouse or a child, while derivative in nature, are considered separate causes of action.

"As separate causes of action, loss of consortium claims must be 'timely' in their own right for purposes of the statute of limitations," the panel said. "The three minor children were required to bring their claims within the applicable two-year limitation period. Because they failed to do so, we affirm."

The appeals court also noted that the children's claims were invalid because they would improperly add three new parties to the proceedings.

"The relation back doctrine generally does not apply when an amendment seeks to add an entirely new party to the action after the statute of limitations has expired," the panel said.

An attorney for the health care providers, Jessica Gross, told Law360 on Thursday that they are satisfied with the outcome.

"We are pleased that the Third District Court of Appeal affirmed Judge Fine's ruling, which appropriately dismissed claims that were barred by the statute of limitations," she said. "The correct result was reached and the Third DCA's opinion will serve as important legal precedent on this issue."

An attorney for Castro did not immediately respond to a request for comment.

Judges Ivan F. Fernandez, Norma S. Lindsey and Monica Gordo sat on the panel for the Third District.

Castro is represented by Jay M. Levy and Ryan L. Marks of Jay M. Levy PA and James J. Traitz of James J. Traitz LLC.

The health care providers are represented by Jessica L. Gross of Wicker Smith O'Hara McCoy & Ford PA and Norman M. Waas of Falk Waas Hernandez Solomon Mendlestein & Davis PA.

The case is Stacey Castro et al. v. Italo Linfante M.D. et al., case number 3D19-2136, in the District Court of Appeal of the State of Florida, Third District.

--Editing by Steven Edelstone.

Update: The story has been updated to include a statement from an attorney for the health care providers.

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