



Robert W. Hojnoski  
Reminger & Reminger Co., L.P.A.  
7 W. 7<sup>th</sup> Street, Suite 1990  
Cincinnati, Ohio 45202

COUNSEL FOR APPELLEE RESPITE CENTER CORE BEHAVIORAL HEALTH CENTER  
AND TALBERT HOUSE, INC.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST.....</b>	<b>1</b>
<b>STATEMENT OF THE CASE AND FACTS .....</b>	<b>2</b>
<b>ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW .....</b>	<b>5</b>
<b><u>Proposition of Law No. I: Statutes of limitations are tolled for plaintiffs of unsound mind pursuant to R.C. 2305.16.....</u></b>	<b>5</b>
<b>CONCLUSION .....</b>	<b>12</b>
<b>PROOF OF SERVICE .....</b>	<b>13</b>
<b>APPENDIX</b>	<b><u>Appx. Page</u></b>
<b>Judgment Entry of the Hamilton County Court of Appeals (June 6, 2007) .....</b>	<b>1</b>

**EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST**

This case involves a matter of public or great general interest, pursuant to Section 2(B)(2)(e), Article IV of the Ohio Constitution, because the issue presented is of importance to the public as distinguished from the parties. *Williamson v. Rubich* (1960), 171 Ohio St. 253. This case also involves a novel question of law or procedure which appeals to the Supreme Court's collective interest in jurisprudence. *Manigault v. Ford Motor Co.*, 96 Ohio St.3d 431, 2002-Ohio-5057, dissent at ¶17. Citing, *Noble v. Colwell* (1989), 44 Ohio St.3d 92.

In the instant matter, the proposition of law presented for review is whether the tolling of the statute of limitations provided for in § 2305.16, terminates once an attorney has been retained on behalf of an individual deemed to be of unsound mind within the meaning of the statute. This issue is important to the collective interest of jurisprudence given the need for certainty in being able to define the applicable statute of limitations for both plaintiffs and defendants.

This matter involves a weighing of the general objectives of all statutes of limitations, against a disabled individual's ability to protect her rights. Unlike a guardian, who has the duty and the ability to initiate an action on behalf of an incompetent person, an attorney must have the opportunity to consult with his client before an action is initiated. It is clear that a definitive statute of limitations is necessary to the prompt and equitable administration of justice, however, a person of unsound mind should not be time barred by a statute of limitations where no guardian has been appointed.

Since this matter involves an issue which will have an impact on the general public, not just the within parties, this matter is clearly one of public or great general interest. Therefore, this Court should accept jurisdiction of the within appeal.

### **STATEMENT OF THE CASE AND FACTS**

Plaintiff filed a Complaint on November 3, 2004 in the Court of Common Pleas in Hamilton County alleging negligent medical services resulting in personal injuries sustained on or about October 24, 2003. (Original Complaint, T.d. 2, ¶ 7-10). Brian Griffin, D.O. was named as a Defendant in the original complaint. (Id.). On December 10, 2005, Plaintiff filed an amended complaint naming various other Defendants including Dr. Cheng and Dr. Mann, Kate Daniel, Jeanie Toebe and Nancy Bogner. (Plaintiff's First Amended Complaint, T.d. 51). Defendants University Hospital and Dr. Brian Griffin both moved to strike Plaintiff's Amended Complaint. On January 13, 2006, the court filed an Entry Overruling Motion for relief of University Hospital, Inc., and the Health Alliance of Greater Cincinnati and the Motion to Strike of Brian Griffin, D.O. (Entry Overruling Motion for Relief of University Hospital, Inc. and the Health Alliance of Greater Cincinnati and the Motion to Strike of Brian Griffin, D.O., T.d., 68-2). Defendants Griffin, Cheng, Mann, Daniels, Toebe, and Bogner then filed a motion for summary judgment alleging that Plaintiff failed to bring her claim within the statutory period. (Defendant's Motion of Summary Judgment, T.d. 72, 83, 85). The lower court granted Defendant's motion for summary judgment. (Judgment Entry, T.d. 101-1). Plaintiff Owens now appeals that judgment. (T.d. 103).

The following facts are uncontroverted. Around 6:00 a.m. on October 24, 2003, Plaintiff Owens was brought to University Hospital by Cincinnati Police Officers. (University Hospital Psychiatric Emergency Service Nursing Triage Records, T.d. 91-Exhibit A and T.d. 96-Exhibit B). According to the Medical records, Plaintiff Owens dialed 911. (Id.). When the police responded to the call, Plaintiff Owens told the officers that she wanted to kill herself and complained that she had head lice. (T.d. 91-Exhibit B and T.d. 96-Exhibit B). The records state that Plaintiff Owens said “all kinds of crazy stuff,” “people out to get me,” does not trust herself, and was rambling. (University Hospital Psychiatric Service Nursing Triage, T.d. 91-Exhibit A and T.d. 96-Exhibit B). Plaintiff Owens was diagnosed as paranoid schizophrenic and discharged.

Less than thirteen hours later, Plaintiff was brought to University Hospital at 6:35 p.m. by her sister, who found her running around naked. (University Hospital Emergency Department Nursing Record, T.d. 91-Exhibit C, and T.d. 96-Exhibit B). There, Plaintiff Owens was admitted and treated by Drs. Griffin, Cheng and Mann. (Plaintiff’s First Amended Complaint, T.d. 51-6). Dr. Griffin was the admitting physician for the psychiatric emergency room at University Hospital and Plaintiff Owens was in fact entered as being under the care of Dr. Griffin; his name is on all pertinent records. (Affidavit of Dr. Griffin, T.d. 82-1, 2). While Dr. Griffin was the admitting physician, Drs. Ravi Mann and Eugene Cheng were the physicians who specifically attended to Plaintiff Owens during her visit to the hospital. (Id.). Drs. Mann and Cheng ultimately evaluated and diagnosed Plaintiff Owens while she was admitted to the psychiatric emergency room. (Id.). Dr. Griffin was the head of the department at that time and was “ultimately responsible for all final decisions.” (Id.).

According to the medical records from that visit, Plaintiff Owens had removed her clothing and said she had lice. (Id.). The records further stated that Plaintiff Owens attempted to “comb all her hair out” even though medical staff determined she did not have lice. (Id.). The medical records stated Plaintiff Owens was “feeling itchy” and asked for treatment for her lice. (Id.). Further medical records indicate that Plaintiff Owens complained of being raped at 9 a.m. that morning and that she was “fearful that police are mad at her because she gave the police dogs lice as well.” (University Hospital Psychiatric Emergency Service Clinical Evaluation, T.d. 91-Exhibit D and T.d. 96-Exhibit B). Additionally, the records state Plaintiff Owens was “fearful the dogs will eat her.” (Id.). Plaintiff Owens was diagnosed as Paranoid Schizophrenic (University Hospital Emergency Department Record, T.d. 91-Exhibit E, and T.d. 96-Exhibit B) and instructed to go directly to Respite Center (University Hospital Discharge Instruction Form, T.d. 91-Exhibit F and T.d. 96-Exhibit B).

Upon arriving at Respite Center, Plaintiff Owens was assigned a room and required intense supervision because of her mental condition. (Plaintiff’s First Amended Complaint, T.d. 51-6). As a result of her paranoid schizophrenic episode, Plaintiff Owens’ “mental condition and normal self-protective mechanisms were diminished due to her recent psychological deterioration.” (Id.). However, Plaintiff was still left to her own devices for extended periods of time. (Id.). During that time, Plaintiff, who was still suffering from paranoid schizophrenia and psychotic delusion, jumped out of Respite House’s second story bedroom window, and suffered severe injuries. (Id.).

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

### **Proposition of Law No. I: Statutes of limitations are tolled for plaintiffs of unsound mind pursuant to R.C. 2305.16.**

Plaintiff Lois Owens is protected by Ohio Revised Code 2305.16, which tolls the statute of limitations for a person of unsound mind.

R.C. 2305.16 provides, in pertinent part:

“\* \* \* if a person entitled to bring any action mentioned in those sections, unless for penalty of forfeiture, is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person may bring it within the respective times limited by those sections, after the disability is removed.”

R.C. 1.02(C) defines “unsound mind” as “including all forms of mental retardation or derangement.” The Ohio Supreme Court specifically limited an unsound mind claim to “forms of mental retardation or derangement” and “insanity.” *Fisher v. Ohio University* (1992), 63 Ohio St.3d 484, 589 N.E.2d 13. Although a general claim of disability is not sufficient to meet the “unsound mind” standard required to toll a statute of limitations, an assertion of specific details demonstrating Plaintiff’s derangement or insanity is sufficient to prove Plaintiff is of unsound mind. *Bryant v. Floyd* (Dec. 16, 2005) Mahoning App. No. 05 MA 90, 2005 WL 3489795, unreported. Moreover, if one of Plaintiff’s doctors attests to Plaintiff’s claim that he or she is of unsound mind, it is sufficient to create a genuine issue of material fact as to whether Plaintiff’s condition tolled the statute of limitations. *Id.* Further, if it is claimed that Plaintiff was of unsound mind at the time the cause of action accrued, any otherwise admissible evidence tending

to support that claim may be used to establish her entitlement to tolling. *Almanza v. Kohlhorst* (1992), 85 Ohio App.3d 135, 619 N.E.2d 442.

**a. Plaintiff's Original Complaint clearly stated that Plaintiff was diagnosed as a Paranoid Schizophrenic**

Defendants argued that Plaintiff Owens' claim was barred by the statute of limitations because Plaintiff has "failed to support her claim that she was of 'unsound mind' with any evidence that meets the requirements of the Ohio Statute." (Defendant's Motion for Summary Judgment, T.d. 72, 83, 85). However, Plaintiff's original Complaint stated that Plaintiff Lois Owens was diagnosed as a paranoid schizophrenic. (Plaintiff's Original Complaint, T.d. 2, ¶ 7). Further, Plaintiff's complaint stated that during her stay at Respite Center, Plaintiff's mental condition and normal self-protective mechanisms were diminished due to her recent psychological deterioration. Additionally, Plaintiff Owens was dependent upon skilled medical and nursing care in order to avoid injury. (Plaintiff's Original Complaint, T.d. 2, ¶ 8).

**b. Plaintiff Owens' Medical Records further illustrate Plaintiff was of unsound mind.**

Medical records prior to the accident indicated that Plaintiff Owens was of unsound mind. Around 6:00 a.m. on October 24, 2003, one day before Plaintiff Owens jumped through the second floor window at the Respite Center, Plaintiff Owens was brought to University Hospital by Cincinnati Police Officers. (University Hospital Psychiatric Emergency Service Nursing Triage Records, T.d. 91-Exhibit B). According to the Medical records, Plaintiff Owens dialed 911. (Id.). When the police responded to the call, Plaintiff Owens told the officers that she wanted to kill herself and complained that she had head lice. (T.d. 91-Exhibit B and T.d. 96-Exhibit B). The records state that

Plaintiff Owens said “all kinds of crazy stuff,” “people out to get me,” does not trust herself, and was rambling. (University Hospital Psychiatric Service Nursing Triage, T.d. 91-Exhibit A and T.d. 96-Exhibit B). Plaintiff Owens was diagnosed as paranoid schizophrenic and discharged.

Less than thirteen hours later, Plaintiff was brought to University Hospital at 6:35 p.m. by her sister, who found her running around naked. (University Hospital Emergency Department Nursing Record, T.d. 91-Exhibit C and T.d., 96-Exhibit B). Medical records indicate that Plaintiff Owens removed her clothing and said she had lice. (Id.). The records further stated that Plaintiff Owens attempted to “comb all her hair out” even though medical staff determined she did not have lice. (Id.). The medical records stated Plaintiff Owens was “feeling itchy” and asked for treatment of her lice. (Id.). Further medical records indicate that Plaintiff Owens complained of being raped at 9:00 a.m. that morning and that she was “fearful that police are mad at her because she gave them and the police dogs lice as well.” (University Hospital Psychiatric Emergency Service Clinical Evaluation, T.d. 91-Exhibit D and T.d. 96-Exhibit B). Additionally, the records state Plaintiff Owens was “fearful the dogs will eat her.” (Id.). Plaintiff Owens was diagnosed as Paranoid Schizophrenic (University Hospital Emergency Department Record, T.d. 91-Exhibit E) and instructed to go directly to Respite Center (University Hospital Discharge Instruction Form, T.d. 91-Exhibit F and T.d. 96-Exhibit B).

Clearly, these medical records demonstrate that Plaintiff Lois Owens was of unsound mind at the time of the accident. Certainly Plaintiff Owens’ actions were not those of a sane person. A person of sound mind simply does not run around naked

attempting to comb out her hair in fear of lice. Nor does a person of sound mind believe herself to be in danger of dogs eating her or of people out to get her.

Defendants argue however that Plaintiff Owens' own actions prove she was of sound mind. (Motion for Summary Judgment of Defendants, T.d. 72, 83, 85). Defendants argue that Plaintiff was of sound mind because she "had the presence of mind and was sound enough to seek advice of counsel such that, just nine days after the accident, her attorney was already sending letters regarding this action\* \* \*" (Id.). This simply is not true. Plaintiff Lois Owens did not contact her attorney. Instead, Plaintiff Owens' family sought the help of her current counsel. (Affidavit of David Schwalile, Esq. in support of Motion for Summary Judgment, T.d. 80).

Furthermore, even if Plaintiff Owens had contacted her lawyer, the fact that she was represented by legal counsel "should not affect the tolling of the limitations period any more than the appointment of a general guardian, whose powers to act on behalf of an incompetent are infinitely more comprehensive than those of an attorney." *In re Gaines* (1993) 63 Ohio Misc.2d 173, 620 N.E.2d 295. Just because a Plaintiff has enlisted representation by an attorney does not mean that the mental incompetent is capable of "functioning in a meaningful way \* \* \* where cooperation between lawyer and client is essential to the successful prosecution of a litigable matter." *Id.* Thus, even though Plaintiff Owens' family sought legal counsel to represent her, the fact that Plaintiff Owens was of unsound mind as a result of her paranoid schizophrenia prevented her from "functioning in a meaningful way" and tolled the statute of limitations pursuant to R.C. 2305.16.

**c. The affidavit of Dr. Melvin Nizny further establishes by way of specific facts that Plaintiff Owens was of unsound mind.**

In addition to being of unsound mind at the time of the accident as evidenced by her complaint and medical records, the affidavit of Dr. Melvin Nizny shows that Plaintiff Owens was and is still of unsound mind. Dr. Nizny based his opinions on his education, experience, his review of Plaintiff's medical and psychiatric records and his personal examination of Plaintiff Owens on February 20, 2006. (Affidavit of Melvin Nizny, M.D., T.d. 96). Dr. Nizny opined that to a reasonable degree of medical and psychiatric certainty Plaintiff Owens suffers from Paranoid Schizophrenia, Affective Disorder, Dementia, and Memory Loss, and that these mental deficiencies result in hallucinations and delusions. (Id.).

Dr. Nizny further opined to a reasonable degree of medical and psychiatric certainty that Plaintiff Owens' memory is impaired and that Plaintiff Owens is unable to determine when events occurred, and frequently recalls events as being from a time far different from when the events actually occurred. (Id.). Dr. Nizny additionally testified that Plaintiff Owens confuses events which actually occurred with those she creates in her imagination and if she does not remember an event, she will sometimes imagine an event in its place. (Id.). A perfect example of Plaintiff Owens confusing events is evident from the discrepancy between the medical records from the date of the accident and the deposition of Plaintiff Owens. The medical records from University Hospital state that "the patient states that she was concerned there were dogs chasing her and that she feared for her life at the time." (The University Hospital Emergency Department Physician Report, T.d. 91-Exhibit H, and T.d. 96-Exhibit B). However, Plaintiff Owens

version of the story changed dramatically at her deposition when she testified that “I just thought somebody was after me and I ran towards the window and jumped out of it.” (Plaintiff’s Deposition, T.d. 69-16).

As a result of her conditions, Plaintiff Owens is not only unable to function properly in a normal setting, but she is also unable to participate in an effective way so as to exercise dominion over her lawsuit. As stated above, Plaintiff Owens did not seek legal counsel herself, but rather her family members sought such aid on her behalf. Therefore, the fact that she was represented by legal counsel “should not affect the tolling of the limitations period” because Plaintiff Owens was not capable of “functioning in a meaningful way \* \* \* where cooperation between lawyer and client is essential to the successful prosecution of a litigable manner.” *In re Gaines* (1993) 63 Ohio Misc.2d 173, 620 N.E.2d 295. In order to function in a meaningful way, a Plaintiff must be able to “exercise effective superintendence over [her] lawsuit, “by way of client inquiry, demand for relevant information or response to [her] lawyer’s correspondence.” *Id.*

It is clear from Dr. Nizny’s Affidavit that Plaintiff Owens was not able to function in a meaningful way with regard to legal matters. To begin with, Dr. Nizny stated that Plaintiff Owens’ mental deficiency/derangement prevents her from normal functioning and disables her from functioning independently. (Affidavit of Melvin Nizny, M.D., T.d. 96). Obviously if Plaintiff is unable to function independently in everyday situations, she will also be unable to function in a legal setting. Furthermore, Dr. Nizny also stated that Plaintiff Owens’ “mental deficiencies/derangement prevents her from consulting with counsel, preparing and presenting her case, attending to her affairs and preclude her from asserting her rights in a court of justice.” (*Id.*) In fact, Dr. Nizny opined that Plaintiff

Owens would not have been able to retain counsel or bring a lawsuit without the help of her family. (Id.). Thus, since Plaintiff Owens' derangement prevents her from consulting with counsel in a meaningful manner, she clearly cannot exercise effective superintendence over her lawsuit and the statute of limitations should be tolled.

Most importantly, however, is that Dr. Nizny testified within a reasonable degree of medical and psychiatric certainty that Plaintiff Owens was of "unsound mind" at the time of the incident on October 25, 2003 and that **her mental deficiency / derangement / "unsound mind" predated this incident and continues to the present time.** (Id.). (emphasis added).

Finally, Dr. Nizny opined to a reasonable degree of medical certainty that Brian Griffin, D.O., as an Admitting Physician at PES had a duty to consult with and supervise the attending physician Ravi Mann. (Id.). This opinion was based on Dr. Nizny's review of Dr. Griffin's Affidavit, in which Dr. Griffin admitted that he is ultimately responsible for all final decisions. (Id.). Dr. Nizny further testified to a reasonable degree of medical and psychiatric certainty that Dr. Griffin and Dr. Mann "deviated from the required standard of care in regard to the treatment rendered to Lois Owens on October 25, 2003." (Id.).

Clearly, Dr. Nizny's Affidavit was more than sufficient to create a genuine issue of material fact in this case. Dr. Nizny opined that Plaintiff Owens was able to protect her rights, consult with counsel and assert her rights in a court of justice. Further Dr. Nizny attached medical records to his affidavit that supported his opinions. Dr. Nizny stated that his opinions were based on a reasonable degree of medical and psychiatric certainty and also based on his education, experience and examination of Plaintiff Owens.

The Supreme Court of Ohio held in *Bowman v. Lemon*:

“it is necessary to consider the record to determine whether there is any evidence tending to show any species of mental deficiency or derangement from which the plaintiff was suffering which would prevent him from properly consulting with counsel, preparing and presenting his case, and attending to his affairs, and preclude him from asserting his rights in a court of justice \* \* \*” *Bowman v. Lemon* (1926), 115 Ohio St. 326, 154 N.E. 317.

Certainly Dr. Nizny’s Affidavit and the medical records from which he in part based his opinion fully meet the standard created by the *Bowman* Court in determining that Plaintiff Owens was and still is, of unsound mind.

#### CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

Randy A. Byrd, Counsel of Record



---

Randy A. Byrd, Blake R. Maislin  
COUNSEL FOR APPELLANT,  
LOIS OWENS

**Certificate of Service**

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees:

Monica H. McPeck  
Frost Brown Todd, L.L.C.  
2200 PNC Center  
201 E. 5<sup>th</sup> Street  
Cincinnati, Ohio 45202  
*Counsel for University Hospital  
and the Health Alliance of  
Greater Cincinnati*

Judd R. Uhl  
Freund, Freeze & Arnold  
105 E. 4<sup>th</sup> Street, Suite 1400  
Cincinnati, Ohio 45202  
*Counsel for Brian Lewis, D.O.*

Robert W. Hojnoski  
Reminger & Reminger Co., L.P.A.  
7 W. 7<sup>th</sup> Street, Suite 1990  
Cincinnati, Ohio 45202  
*Counsel for Respite Center Core  
Behavioral Health Center and  
Talbert House, Inc.*

  
\_\_\_\_\_  
Randy A. Byrd/Blake R. Maislin  
COUNSEL FOR APPELLANT,  
LOIS OWENS

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

LOIS OWENS,	:	APPEAL NO. C-060621
	:	TRIAL NO. A-0408942
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BRYAN GRIFFIN, D.O.,	:	
KATHLEEN DANIEL,	:	
RAVI MANN, M.D.,	:	
EUGENE CHENG, M.D.,	:	
and	:	
JEANNIE TOEBBE,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Lois Owens appeals the trial court's entry of summary judgment in favor of Brian Griffin, D.O., Eugene Cheng, M.D., Ravi Mann, M.D., Kathleen Daniel, and Jeannie Toebbe, on her malpractice claims.

On October 24, 2003, Owens was evaluated in Cincinnati at University Hospital's psychiatric emergency-services unit. Owens was released from the psychiatric unit and referred to Respite Center, a residential support center for adults

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

suffering from mental illnesses and experiencing crises. Within a few hours of her arrival, Owens jumped out of a second-floor window at the facility.

The trial court granted summary judgment in favor of Griffin, Cheng, Mann, Daniel, and Toebe on all of Owens' claims. In a single assignment of error, Owens now argues that the trial court erred by entering the judgment.

An action upon a medical claim must be commenced within a year after the cause of action accrued.<sup>2</sup> In this case, Owens filed her claim against Griffin on November 3, 2004, ten days after the one-year statute of limitations for her claim had expired.

Owens filed an amended complaint on December 19, 2005, adding Cheng, Mann, Toebe, and Daniel as defendants. But even if the amendment related back to the date of the original pleading pursuant to Civ.R. 15(C), the amended complaint was untimely because the original complaint had been filed beyond the expiration of the statute of limitations. So Owens' action against each of the appellees was time-barred.

Owens argues though that the statute of limitations was tolled because she was of unsound mind at the time her cause of action accrued. Under R.C. 2305.16, if a person is of unsound mind at the time a cause of action accrues, the person may bring the action within the statutory limitations period for the action, after the disability is removed.

In this case, Owens had the burden of proving that she was suffering from some form of mental deficiency or derangement that prevented her from consulting

---

<sup>2</sup> R.C. 2305.113(A).

with counsel, preparing and presenting her case, and attending to her affairs, and that precluded her from asserting her rights in court.<sup>3</sup>

Here, we find no persuasive evidence that Owens' mental condition precluded her from asserting her legal rights. The record demonstrates that on November 4, 2003, just eleven days after Owens' injury, her attorney sent a letter to University Hospital announcing his representation of Owens "with respect to the possible medical malpractice case with your facility." Her attorney instructed the hospital to direct any communications for Owens through his office, and he notified the hospital that any authorizations previously signed by Owens were revoked.

In support of her claim that she was of unsound mind within the meaning of R.C. 2305.16, Owens presented the affidavit of Melvyn Nizny, M.D., who opined that Owens was of unsound mind at the time of her injury and that she had not been relieved of the disability. Owens later presented an amended affidavit by Nizny in which he opined that Owens' mental deficiency "prevents her from consulting with counsel, preparing and presenting her case, attending to her affairs and preclude[s] her from asserting her rights in a court of justice."

While Owens presented evidence of her mental deficiency or derangement, she was required to further demonstrate that her condition had actually *prevented* the timely prosecution of the action.<sup>4</sup> In light of Owens' nearly immediate retention of legal counsel; counsel's communication with University Hospital about Owen's potential medical malpractice claim; as well as counsel's failure to affirmatively demonstrate that Owens' ability to consult with counsel was compromised, Nizny's

---

<sup>3</sup> *Bowman v. Lemon* (1926), 115 Ohio St. 326, 154 N.E.2d 317.

<sup>4</sup> See *McKay v. Cutlip* (1992), 80 Ohio App.3d 487, 492, 609 N.E.2d 1272, citing *Bowman*, supra.

affidavit was of no significance with respect to the issue of Owens' unsoundness under R.C. 2305.16.

Because Owens failed to file her malpractice claims within the one-year statute of limitations, and because the period was not tolled, we hold that the trial court properly entered summary judgment in favor of Griffin, Cheng, Mann, Daniel, and Toebbe.<sup>5</sup> Accordingly, the assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., DINKELACKER and WINKLER, JJ.**

RALPH WINKLER, retired, of the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on June 6, 2007

per order of the Court \_\_\_\_\_  
Presiding Judge

---

<sup>5</sup> See *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.