

IN THE SUPREME COURT OF OHIO

08-0140

Linder Tribble,	:	
	:	
Appellant,	:	On Appeal from the
	:	Hamilton County Court
v.	:	of Appeals, First
	:	Appellate District
Children's Hospital Medical Center, et. al.,	:	
	:	Court of Appeals
Appellees.	:	Case No. C070058

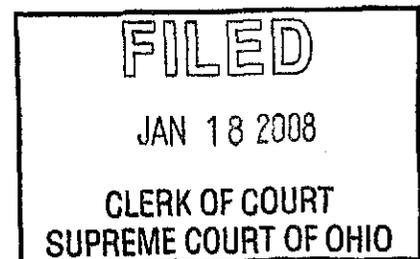
NOTICE OF APPEAL OF APPELLANT, LINDER TRIBBLE

Marlene Penny Manes [0022575]
917 Main Street, Suite 400
Cincinnati, Ohio 45202
(513) 977-4214
Fax No. (513) 977-4218

COUNSEL FOR APPELLANT, LINDER TRIBBLE

James A. Comodeca [0038564]
Jennifer O. Mitchell [0069594]
Dinsmore & Shohl, LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8200
Fax: (513) 977-8141

COUNSEL FOR APPELLEES, CHILDREN'S HOSPITAL MEDICAL CENTER
AND THE CHILDREN'S HOSPITAL, CINCINNATI, OHIO



Notice of Appeal of Appellant, Linder Tribble

Appellant, Linder Tribble, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment entry of the Hamilton County Court of Appeals, First Appellate District, issued in Court of Appeals case No. C070058, and journalized on December 5, 2007.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

By: 
Marlene Penny Manes

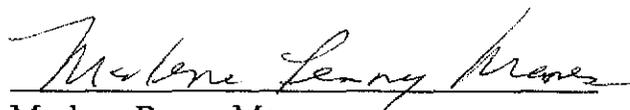
COUNSEL FOR APPELLANT,
LINDER TRIBBLE

Proof of Service

This is to certify that a copy of this Notice of Appeal was served this 17th day of January, 2008, by ordinary U.S. mail, postage prepaid, on:

James A. Comodeca [0038564]
Jennifer O. Mitchell [0069594]
Dinsmore & Shohl, LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202

COUNSEL FOR APPELLEES, CHILDREN'S HOSPITAL MEDICAL CENTER
AND THE CHILDREN'S HOSPITAL, CINCINNATI, OHIO


Marlene Penny Manes

COUNSEL FOR APPELLANT,
LINDER TRIBBLE

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

ENTERED
DEC 05 2007



D76160608

LINDER TRIBBLE,	:	APPEAL NO. C-070058
	:	TRIAL NO. A-0607631
Plaintiff-Appellant,	:	
	:	JUDGMENT ENTRY.
vs.	:	
CHILDREN'S HOSPITAL MEDICAL	:	
CENTER	:	
	:	
and	:	
	:	
THE CHILDREN'S HOSPITAL	:	
	:	
Defendants-Appellees.	:	

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

In one assignment of error, Linder Tribble appeals from the trial court's judgment dismissing her complaint under Civ.R. 12(B)(6). She raises two main arguments: (1) that she properly pleaded a cause of action for negligent infliction of emotional distress, and (2) that her suit was not time-barred. For the following reasons, we affirm the judgment of the trial court.

Appellate review of a Civ.R. 12(B)(6) ruling is de novo.² We must accept the factual allegations in Tribble's complaint as true and view all reasonable inferences in her favor to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.
² *Perrysburg Township v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶5; *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136, ¶4-5.

OHIO FIRST DISTRICT COURT OF APPEALS

determine if her complaint states, as a matter of law, a claim upon which relief may be granted.³

In Tribble's complaint, she claimed that, upon seeing her 11-month-old grandson in the hospital and hearing that the hospital's allegedly negligent treatment of him could result in his death or in grave medical problems, she had suffered a heart condition and was hospitalized for several days. As a result, Tribble asserted, the hospital was liable to her for negligent infliction of emotional distress.

The trial court correctly concluded that Tribble had failed to state a legal claim. Negligent infliction of emotional distress occurs when a plaintiff has witnessed or experienced a dangerous accident, or has appreciated actual physical peril.⁴ In the case of a bystander, this tort requires that the bystander "be traumatized by the emotionally distressing occurrence of a sudden, negligently caused event."⁵ A bystander "does not include a person who was nowhere near the accident and had no sensory perception of the events surrounding the accident."⁶

Visiting a hospital patient who has allegedly been the victim of medical malpractice does not meet the elements of this tort. Tribble did not assert that she had been anywhere near a sudden accident, or that she had had a sensory perception of the events surrounding an accident. Tribble's complaint was properly dismissed.

³*State ex rel. Hanson v. Guernsey Cty. Bd. Of Commrs.* (1992), 65 Ohio St.3d 545, 547, 1992-Ohio-73, 605 N.E.2d 378; see, also, *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 565 N.E.2d 584.

⁴*Heiner v. Moretuzzo*, 73 Ohio St.3d 80, 85-86, 1995-Ohio-65, 652 N.E.2d 664; *Paugh v. Hanks* (1983), 6 Ohio St.3d 72, 78, 451 N.E.2d 759.

⁵*Brose v. Bartlemay* (Apr. 16, 1997), 1st Dist. No. C-960423.

⁶*Burris v. Grange Mutual Cos.* (1989), 46 Ohio St.3d 84, 92-93, 545 N.E.2d 83, overruled on other grounds in *Savoie v. Grange Mutual Ins. Co.*, 67 Ohio St.3d 500, 1993-Ohio-134, 620 N.E.2d 809; see, also, *Doe v. Archdiocese*, 167 Ohio App.3d 488, 2006-Ohio- 2221, 855 N.E.2d 894, ¶23.

OHIO FIRST DISTRICT COURT OF APPEALS

Tribble also contends that her claim was not time-barred. We acknowledge that the Ohio Supreme Court's recent holding in *Fehrenbach v. O'Malley*⁷ may extend the statute of limitations in this case until after Tribble's grandson reaches the age of majority. But given the disposition of Tribble's first argument, this issue is moot. We therefore decline to address it.⁸

We overrule Tribble's sole assignment of error. The judgment of the trial court is affirmed.

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.

PAINTER, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 5, 2007
per order of the Court 
Presiding Judge

⁷113 Ohio St.3d 18, 2007-Ohio-971, 862 N.E.2d 489.

⁸ See App.R. 12(A)(1)(c).