[Cite as *Walker v. Hodge*, 2010-Ohio-1989.]

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

CURTIS WALKER, Plaintiff-Appellant, vs. THOMAS HODGE, Defendant-Appellee.	: : : : : :	APPEAL NO. C-090535 TRIAL NO. A-0604439 *D E C I S I O N.*

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: May 7, 2010

William C. Knapp, for Plaintiff-Appellant,

Jay R. Langenbahn and *Timothy M. Ruttle*, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

WILLIAM L. MALLORY JR., Judge.

I. Statement of Facts and Procedural Posture

{¶1} Plaintiff-appellant Curtis Walker, in his capacity as parent and next friend of his son Erik Walker, and as legal custodian of his stepdaughter Dijona Silvers, filed a civil lawsuit against defendant-appellee Thomas Hodge in September 2003.[1] The case related to an automobile accident that had occurred in May 2002, and that had resulted in injuries to his son and stepdaughter.[2] At trial, over Hodge's objection, Erik Walker's and Silvers's medical bills were submitted as plaintiff's exhibits. Erik Walker's medical bills totaled $93,259.87, while Silvers's totaled $59,829.10. The jury awarded Curtis Walker $183,259.87 in damages and also awarded Silvers $149,829.10 in damages. The jurors were not provided, and they did not complete, any interrogatories relating to the judgment. In the appeal from that judgment, this court did not address any issues relating to the jury award or the lack of interrogatories.[3]

{¶2} In May 2006, Curtis Walker filed the current lawsuit against Hodge, this time in his personal capacity, seeking reimbursement for Erik Walker's medical expenses. On Hodge's motion, the trial court granted summary judgment in favor of Hodge. Walker appealed, and this court reversed the judgment and remanded the case due to the incomplete state of the submitted record.[4] On remand, the trial court once again awarded summary judgment in favor of Hodge, specifically determining

[1] Hamilton C.P. No. A-0306562.
[2] During the trial, Silvers reached the age of majority. She was substituted as a plaintiff in her personal capacity. At that point, Curtis Walker was no longer associated with Silvers's part of the lawsuit.
[3] *Piening v. Enterprise Rent-a-Car of Cincinnati, Inc.*, 1st Dist. No. C-060535, 2007-Ohio-4709.
[4] *Walker v. Hodge*, 1st Dist. No. C-080002, 2008-Ohio-6828.

that Curtis Walker's claim was time-barred by R.C. 2305.10(A)'s two-year statute of limitations. In addition, the court held that Walker's claim was barred because of res judicata as a result of the first lawsuit. Once again, Curtis Walker has appealed, asserting two assignments of error.

II. Applicable Statute of Limitations

{¶3} Civ.R. 56(C) states that, before summary judgment may be granted, it must be determined that (1) there exists no genuine issue of any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) from the evidence it appears that reasonable minds can come to but one conclusion, and with the evidence viewed most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.[5] Further, a ruling on summary judgment poses a question of law that is subject to a de novo standard of review.[6]

{¶4} In his first assignment of error, Walker argues that the trial court erred when it held that R.C. 2305.10(A)'s two-year statute of limitations applied to his claim, and that because the car accident had occurred four years prior to the lawsuit, Walker was time-barred from filing his complaint. Walker argues two main points. First, Walker himself was not the injured party; his son Erik was. Therefore, R.C. 2305.10(A) did not apply to him. Walker asserts that the claim of a parent for the medical expenses incurred by his child is subject to the statute of limitations applicable to the child's claims, and that the statute of limitations for a child does not begin to run until the child reaches the age of majority.[7] Because Walker's son was ten years old at the time of the accident, and fourteen years old at the time of the

[5] *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 217, 219, 631 N.E.2d 150.
[6] *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 145, 147, 593 N.E.2d 286.
[7] *Fehrenbach v. O'Malley*, 113 Ohio St.3d 18, 2007-Ohio-971, 862 N.E.2d 489.

second lawsuit, Walker concludes that he filed his claim well within the statute of limitations.

{¶5} Second, Walker argues that even if we were to determine that *Fehrenbach* did not apply, R.C. 2305.09 states that the applicable statute of limitations for a claim by a person legally responsible for the payment of medical expenses incurred by another against the person responsible for the injuries is four years.[8] The accident occurred on May 17, 2002, and the lawsuit was filed on May 17, 2006. Thus, Walker reasons, the statute of limitations had not yet expired.

{¶6} Hodge argues that R.C. 2305.10(A) did apply and that Walker's claim was filed two years too late. He cites *Blakeman v. Condorodis*,[9] in which we held that medical bills paid or incurred by the parents were claims separate from one for personal injuries suffered by the child.[10] Thus, reimbursement for medical bills was a claim subject to the parents' statute of limitations.[11]

{¶7} Hodge also cites the *Fehrenbach* case. In *Fehrenbach*, the parents of a minor child allegedly injured due to medical malpractice brought two claims-loss of consortium (for themselves) and medical malpractice (on behalf of their injured child)-six years after the events in question had occurred. The defendants argued that the parents had brought the action outside the applicable statute of limitations. The Ohio Supreme Court held that the statute of limitations for the malpractice claim was tolled because the injured party was a minor.[12] It then held that the time for bringing the loss-of-consortium claim asserted personally by the parents was also tolled. The court's reasoning was, at heart, to avoid piecemeal, separate litigation, as

[8] See *Dean v. Angelas* (1970), 24 Ohio St.2d 99, 264 N.E.2d 911.
[9] (1991), 75 Ohio App.3d 393, 599 N.E.2d 776.
[10] Id. at 397-398.
[11] Id.
[12] *Fehrenbach*, supra; R.C. 2305.16.

well as the time and expense of having to defend more than once.[13] Because both claims were brought together, and because the malpractice claim and the loss-of-consortium claim were "joint and inseparable, the disability of one shall inure to the benefit of all."[14]

{¶8} Hodge argues that unlike *Fehrenbach*, where the parents brought the two claims together, Walker brought a separate and repetitive action. Thus, Walker was not entitled to the tolling protection that *Fehrenbach* provided to the parents' loss-of-consortium claim, and Walker's claim for reimbursement of medical expenses was therefore filed outside the applicable statute of limitations.

{¶9} We agree with Hodge that his interpretation of *Fehrenbach* is the better argument. Given the facts of this case, we doubt that the Ohio Supreme Court would come to the same conclusion it did in *Fehrenbach*, particularly because that case frowned on the type of piecemeal litigation at issue in this case. We also agree that in *Blakeman* we held that medical bills paid by the parent are separate and distinct causes of action from a claim for personal injuries suffered by the child. Our holding in *Blakeman*, however, does not necessarily mean that Walker's claim was time-barred.

{¶10} R.C. 2305.09(D) states that "an injury to the rights of the plaintiff not arising on contract" shall be brought within four years after the alleged cause of the injury. Further, Ohio law holds that when the plaintiff is legally responsible for an injured party, an action by the plaintiff for medical expenses incurred by the injured party as a result of a third-party tort involves an injury to the rights of the plaintiff not arising from a contract.[15]

[13] *Fehrenbach*, supra, at ¶19 and 22.
[14] Id. at ¶21, quoting R.C. 2305.16.
[15] *Dean*, supra, paragraph one of the syllabus.

{¶11} It is not disputed that, as Erik's father, Curtis Walker was legally responsible for his minor son's medical bills. As we have previously noted, the accident in which Erik Walker was injured took place on May 17, 2002. This lawsuit was filed on May 17, 2006. Based upon these facts and the Ohio Supreme Court's holding in *Dean*, we hold that Walker's lawsuit was filed within the four-year statute of limitations in R.C. 2305.09(D), and that the trial court erred when it determined that Walker's lawsuit was filed outside the applicable statute of limitations. But for the reasons given in our response to the second assignment of error, the error involving the statute of limitations did not result in prejudice to Walker. Accordingly, we overrule the first assignment of error.

III. Res Judicata

{¶12} In his second assignment of error, Walker argues that the doctrine of res judicata did not apply to his claim for reimbursement of the medical expenses. He argues that res judicata only applies when two different lawsuits involve the same parties. Walker claims that the first lawsuit was brought in his representative capacity, on behalf of his son, while the second lawsuit was brought in his personal capacity to recover medical expenses paid on his son's behalf. From this, he concludes that the two lawsuits involved different parties. Further, Walker cites *Blakeman*, which holds that medical-reimbursement claims belong to the parent alone; the minor child is not entitled to such reimbursement.[16] Walker continues by arguing that without interrogatories specifying what the original award of damages represented, there is no way to determine whether the jurors in the original lawsuit awarded medical expenses. And even if they did, Walker reasons, they did so erroneously because Walker's son was not entitled to them. Essentially, Walker

[16] *Blakeman*, supra, at 397-398.

argues that there is no demonstration in the record that the jury awarded his son medical-expense reimbursement in the first lawsuit.

{¶13} Hodge argues that res judicata did apply, that Walker had already presented a claim for the medical expenses in the first case, and that the jury considered the expenses as part of the evidence and included them in the damages awarded for Erik Walker. Hodge asserts that all Walker was attempting to do in this case was to gain a windfall by obtaining a second recovery for the medical expenses that were already awarded. Finally, Hodge points to the fact that, in the first lawsuit, the jury considered the medical expenses for both Erik Walker and Dijona Silvers. The jury returned separate damage awards for both Erik Walker and Silvers, with both including, according to Hodge, the amount of the medical expenses plus $90,000. Silvers, because she had reached the age of majority, clearly could not sue again to recover the medical expenses awarded in the first case, and the only reason Walker was attempting to do so in this case was because, unlike Silvers, his son remained a minor.

{¶14} The doctrine of res judicata bars a party in a previous lawsuit from relitigating a claim (estoppel by judgment) or issue (collateral estoppel) in a subsequent lawsuit. Under the doctrine, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action."[17]

{¶15} Walker argues that he was not a party to the first lawsuit, but that his only role was simply to file the case on behalf of his minor son. Even if this were the case, the record reflects that the following stipulations were made concerning the first lawsuit: (1) the complaint stated that the plaintiff, Erik Walker, "has incurred

[17] *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus.

approximately $50,000.00 in medical bills to date"; (2) in his closing argument, Walker's attorney stated, "You're going to have Erik's medical bills[.] This experience cost $93,259.87. That's what it cost to save his life. And the Judge is going to tell you that he's entitled to have his reasonable medical bills paid"; (3) the jury was instructed that "[t]he medical bills submitted to you from Erik Walker * * * are presumed to be reasonable. * * * If, ladies and gentlemen, you find for the Plaintiff Erik Walker, you will decide, by the greater weight of the evidence, an amount of money that will reasonably compensate Erik Walker for the actual injury proximately caused to him by the act of the defendant. In determining these amounts, you will consider * * * the reasonable cost of necessary medical and hospital expenses incurred"; (4) Erik Walker's medical bills and a summary of his medical expenses were admitted into evidence and submitted to the jury for consideration; and (5) the jury awarded $183,259.87 in total damages to Erik Walker, which happened to be the total amount of medical expenses plus $90,000.

{¶16} Based on the foregoing, it is evident that the issue of medical expenses was not only fully litigated in the first lawsuit, but also considered and decided by the jury. Under these circumstances, we overrule Walker's second assignment of error and hold that the doctrine of res judicata was correctly applied by the trial court to prevent Walker from obtaining a second recovery.

IV. Conclusion

{¶17} In conclusion, we overrule both of Walker's assignments of error. The judgment of the trial court is accordingly affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., and **DINKELACKER, J.,** concur.

Please Note:

The court has recorded its own entry this date.