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Pa. Superior Court Backs Doctors' Win In Wrongful Death Row

By **Melissa Daniels**

Law360, Los Angeles (May 30, 2017, 7:38 PM EDT) -- The estate of a woman who died from an aortic aneurysm can't sue for medical negligence despite allegations her doctors failed to tell her about the condition because her claims don't fall within the statute of limitations, a Pennsylvania appellate panel ruled Friday.

Faye Davis died on Jan. 2, 2007, as a result of a ruptured abdominal aortic aneurysm. The executor of her estate, Scott Debonis, and her sister, Mildred Harris, filed a wrongful death suit about four years later.

Though a Mercer County Court of Common Pleas judge tossed their claims for failing to fall within the statute of limitations, Davis' estate and sister argued two of her doctors fraudulently concealed her condition, which gave them time to bring the claims.

A Superior Court panel concluded Friday that the doctors did not fraudulently conceal or misrepresent the cause of Davis' death, and agreed with the lower court that the two-year limitations period barred her estate and sister from bringing wrongful death and survival claims.

"Under settled case law, appellants' wrongful death and survival causes of action accrued on January 2, 2007, the date on which [Davis] died, and only fraudulent concealment of her cause of her death tolls the limitations period," the opinion written by Superior Court Judge Judith Olson said. "Since appellees could not conceal the cause of a death that had not yet occurred, the trial court did not err in concluding that their actions prior to January 2, 2007 were irrelevant to application of the doctrine of fraudulent concealment."

The court's history of the case says Davis first visited defendant Dr. James Ezi-Ashi in December 2003 when he found a mass he suspected might be an aneurysm. He ordered a CT scan, which revealed a 5.1-cm abdominal aneurysm, according to the case history, and then performed an upper endoscopy and colonoscopy. Ezi-Ashi sent the test results to defendant Dr. Gregory George, court records show, but Davis' estate and her sister allege she was never informed about the test results.

Davis saw George and Ezi-Ashi several times over the next few years for hypertension and abdominal complaints. But her estate alleges the doctors never told her about her abdominal aortic aneurysm or the need to manage her hypertension to prevent the aneurysm from growing or rupturing.

Court records say Davis went to Sharon Regional Hospital on Jan. 1, 2007, with pain on her right side, and she was diagnosed with a compression fracture and discharged. She followed up the next day with George, and again went to the hospital. That's when a radiologist determined the presence of an aneurysm, which ruptured later that day, court records say.

Davis' estate and sister initiated legal action in December 2008 when they alleged professional negligence against the hospital and other medical professionals. Then a separate action was filed against George and Ezi-Ashi in 2011, but the lower court granted the doctors' motion for summary judgment in December 2014 after ruling the claims were barred by statute of limitations.

On appeal, Davis' estate and Harris argued the lower court incorrectly tossed the case because the doctors' failure to inform Davis of her aneurysm stretched from December 2003 until the day she died. They argued this constituted fraudulent concealment of her cause of death, which tolled the two-year limitations period the lower court had considered.

But the appellate panel said Friday the estate's arguments are inconsistent with relevant state law, and agreed with the lower court's determination that the doctors' actions before Davis' death were not fraudulent concealment. Additionally, the panel rejected the claim from Davis' estate that alleged misstatements in her medical records constituted fraudulent concealment.

Representatives of the parties didn't immediately respond to requests for comment on Monday.

Senior Judge Eugene B. Strassburger and Judges Judith Olson and Mary Jane Bowes sat on the panel for the Superior Court.

Debonis and Harris are represented by Douglas J. Olcott of Dallas W. Hartman PC.

George is represented by Christopher C. Rulis and Nicholas A. Cerimele III of O'Brien Rulis & Bochicchio LLC. Sagar V. Vallabh and Ezi-Ashi are represented by Paula Koczan and Michael Hamilton of Weber Gallagher Simpson Stapleton Fires & Newby LLP.

The case is Scott R. Debonis v. Gregory A. George, M.D., et al., case number r907 WDA 2016, in the Superior Court of the State of Pennsylvania.

--Editing by Breda Lund.