

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 11, 2012 Session

**MARTIS J. KELLEY ET AL. v. CHATTANOOGA-HAMILTON COUNTY
HOSPITAL AUTHORITY ET AL.**

**Appeal from the Circuit Court for Hamilton County
No. 11 C 717 W. Neil Thomas, III, Judge**

No. E2011-02665-COA-R3-CV-FILED-MAY 23, 2013

This is a medical malpractice¹ action filed pursuant to the Tennessee Medical Malpractice Act (“the TMMA.”) The plaintiffs are wife and husband. The sole defendant is a governmental entity subject to the Governmental Tort Liability Act (“the GTLA”). The defendant operates a hospital in Chattanooga. The complaint alleges that wife was a victim of medical malpractice at the hospital in February 2010. On February 2, 2011, the plaintiffs sent the notice required by Tenn. Code Ann. § 29-26-121(a) (2012), a part of the TMMA. On June 3, 2011, the plaintiffs filed suit against the Hospital Authority. The Authority filed a motion to dismiss pursuant to the provisions of Tenn. R. Civ. P. 12(6), arguing that the suit was not timely filed because it was not filed within the one-year statute of limitations, Tenn. Code Ann. § 29-20-305(b) (2012), set forth in the GTLA. The plaintiffs responded that the period of limitations was extended by 120 days by Tenn. Code Ann. § 29-26-121(c) because the plaintiffs had complied with the pre-suit notice requirements of Tenn. Code Ann. § 29-26-121(a). The trial court dismissed the complaint as untimely filed. The plaintiffs appeal. We affirm.

**Tenn R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., P.J., delivered the opinion of the Court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ, joined.

Jimmy W. Bilbo and Brent J. McIntosh, Cleveland, Tennessee, for the appellants, Martis J. Kelley and Joseph Kelley, Sr.

¹In 2012, following the filing of this action, the General Assembly amended Tenn. Code Ann. §§ 29-26-115 to -122 and -202 of the TMMA. It replaced the “medical malpractice” language with “health care liability.” We will use the old language since this suit was filed before those amendments.

Arthur P. Brock and William J. Rieder, Chattanooga, Tennessee, for the appellee, Chattanooga-Hamilton County Hospital Authority.

OPINION

The plaintiffs present one issue:

Did the trial court err[] in dismissing a claim that was filed within the . . . []120[] day statute of limitations under Tenn. Code Ann. § 29-26-121(c) against a governmental entity medical provider which has received the mandatory pre-suit notice under Tenn. Code Ann. § 29-26-121(a)?

At oral argument, the plaintiffs correctly pointed out that “[t]his precise issue” was then pending before the Supreme Court. We decided to hold this case pending a ruling by the High Court in its case. The Supreme Court has now decided that case. The Supreme Court’s decision is a complete answer to the issue raised in this case:

We hold that the 120-day extension provided by [Tenn. Code Ann. §] 29-26-121(c) does not apply to the plaintiffs’ claim brought under the GTLA.

Cunningham v. Williamson Cnty. Hosp. Dist. ____ S.W.3d ____, No. M2011-00554-SC-S09-CV, 2013 WL 1912611 at *1 (Tenn., filed May 9, 2013). In other words, the one-year statute of limitations in the GTLA, Tenn. Code Ann. § 29-20-305(b), applies to the claim filed by the plaintiffs in this case because Tenn. Code Ann. § 29-26-121(c), wherein the 120-day extension is found, “fails to evince an express legislative intent to extend the statute of limitations in GTLA cases.” *Id.* at *6.

The judgment of the trial court is affirmed. Costs on appeal are taxed against the plaintiffs, Martis J. Kelley and Joseph Kelley, Sr. This case is remanded to the trial court, pursuant to applicable law, for the collection of court costs assessed below.

CHARLES D. SUSANO, JR., PRESIDING JUDGE