

Summary of SC94322, *Shonda Ambers-Phillips and Richard Phillips, II v. SSM DePaul Health Center*

Appeal from the St. Louis County circuit court, Judge Michael T. Jamison
Argued and submitted December 3, 2014; opinion issued April 28, 2015

Attorneys: The Phillipses were represented by Jeremy A. Gogel of The Gogel Law Firm in St. Louis, (314) 775-3864; and SSM DePaul was represented by Timothy C. Sansone, Rodney M. Sharp and Olivia M. Watters of Sandberg Phoenix & von Gontard PC in St. Louis, (314) 231-3332.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A patient and her husband appeal the trial court's dismissal of their medical malpractice claim on grounds that it was filed out of time. In a 6-1 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court's decision. Missouri's statute of repose for foreign object medical malpractice claims establishes an absolute 10-year deadline for filing suit and is not subject to equitable tolling (starting the clock from the date the foreign object is discovered rather than the date of injury). The statute of repose does not violate the Missouri Constitution's due process or equal protection guarantees, nor does it violate the prohibition against special laws or the guarantee of open courts.

Judge Richard B. Teitelman dissents. He would hold that the statute of repose is unconstitutional as applied to the patient because it bars her from asserting a recognized cause of action for bodily injury before she possibly could have discovered her injury. He would reverse the judgment and send the case back to permit the patient to exercise her right under the state constitution's open courts provision to seek a remedy for her injury.

Facts: In 1999, Shonda Ambers-Phillips underwent exploratory surgery at SSM DePaul Health Center after a car accident. Nearly 14 years later, she underwent a second exploratory surgery at a different hospital. During the latter surgery, doctors found four foreign objects that had been left in her abdomen from the 1999 procedure. She sued SSM DePaul alleging medical malpractice, and her husband sued SSM DePaul for loss of consortium (deprivation of personal benefits resulting from a spouse's injury). SSM DePaul moved to dismiss the Phillipses' suit because a Missouri statute, called a "statute of repose," bars filing suits for medical malpractice more than 10 years after the negligence allegedly occurred. The trial court agreed and, in dismissing their claims, also determined that the statute does not violate the due process, equal protection, or open courts guarantees of the Missouri Constitution. The Phillipses appeal.

AFFIRMED.

Court en banc holds: (1) The concept of "equitable tolling" applies to statutes of limitations but does not apply to statutes of repose. Statutes of repose generally may not be tolled because their purpose, distinct from that of statutes of limitations, is to fix a period of time after which a defendant is free from liability. The legislative history of the statutes of limitations and the

statute of repose in section 516.105, RSMo, for claims that a foreign object was left in the body is unambiguous that the legislature intended to establish a 10-year time limitation on filing such a claim, even if the plaintiff does not discover the foreign object until after 10 years has elapsed.

(2) The statute of repose, as applied without equitable tolling, does not violate the Missouri Constitution. There is no equal protection violation here because the right to bring a medical malpractice claim is not fundamental, medical malpractice claimants do not constitute a suspect class entitled to greater scrutiny of laws adversely affecting them, and the statute of repose is rationally related to a legitimate state interest in limiting the period beyond in which parties have to bring a claim. Similarly, the statute of repose is not a constitutionally invalid special law because the legislature had a reasonable basis to set a 10-year limit for the discovery and filing of claims involving the leaving of a foreign object in the body. Further, the statute of repose does not violate the Missouri Constitution's guarantee of open courts, which applies only to prohibit restrictions on filing an otherwise viable cause of action. Because the Phillipses' cause of action had been extinguished by the statute of repose prior to its filing, the open courts provision does not apply. For similar reasons, the statute does not violate the due process clause of the Missouri or federal constitutions. One has a due process right not to be barred from bringing a claim that has vested, but the Phillipses' claim was extinguished before they acquired a vested property right to which due process could apply.

Dissenting opinion by Judge Teitelman: The author would hold that the statute of repose in section 516.105 is unconstitutional as applied to Ambers-Phillips because it bars her from asserting a recognized cause of action for bodily injury before she possibly could have discovered her injury. Consistent with its text and nature, the state constitution's open courts provision requires the provision of an adequate substitute remedy when a statute has the effect of extinguishing an injured person's right to a "certain remedy" for negligently inflicted bodily injury. If the legislature can take away a practically available remedy for a bodily injury that no one disputes, then the textual guarantee of a "certain remedy afforded for every injury to person" is not an individual constitutional right but is, instead, a privilege subject to repeal. The author would reverse the judgment and send the case back to permit Ambers-Phillips to exercise her constitutional right to seek a remedy for her injury.