

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

VINCETTA SPERO

Appellant

v.

SYLVIA MASON ET AL.

Respondents

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DOCKET NUMBER **WD74016**

DATE: April 24, 2012

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable David Michael Byrn, Judge

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Appellate Judges:

Division One  
Cynthia L. Martin, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

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Attorneys:

Timothy Monsees, Kansas City, MO

Counsel for Appellant

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Attorneys:

Mark Kelly, Liberty, MO  
Karl Kuckelman, Overland Park, KS  
Marc Erickson, Kansas City, MO

Counsel for Respondent, Mason  
Counsel for Respondent, Albin  
Counsel for Respondent Gatapia

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

VINCETTA SPERO, Appellant, v.  
SYLVIA MASON ET AL., Respondents

**WD74016**

**Jackson County**

Before Division One Judges: Martin, P.J., Newton, and Mitchell, JJ.

Spero was seriously injured by a resident while working at a nursing home facility. Almost five years later, Spero filed negligence claims against her former supervisors Mason, Albin, and Gatapia for damages caused by the resident's attack. The named supervisors individually sought dismissal of the petition for damages. The trial court granted their separate motions to dismiss on the ground that the lawsuit was time-barred under section 516.105, which requires lawsuits against health care providers to be brought within two years of the incident. Spero appeals.

**REVERSED AND REMANDED.**

**Division One Holds:**

In her sole point, Spero argues that the trial court erred in granting the motions to dismiss because her allegations against Mason, Albin, and Gatapia were based on duties owed directly to her, and were not related to their provision of health care to the resident.

Section 516.105 applies to claims against health care providers when the plaintiff seeks damages for injuries caused by the healthcare provider's delivery of health care to the consumer. However, the section does not apply when the plaintiff seeks damages for injuries that are only incidentally related to the delivery of health care.

We have reviewed the allegations in Spero's petition. Spero alleges that the named supervisors were negligent in securing, isolating, restraining, or otherwise safeguarding the resident. Because custody is a health care service provided by a nursing home to its residents, such allegations supporting the claim of negligence are time barred. However, Spero also alleges that the named supervisors were negligent in failing to warn her of the resident's dangerousness and in concealing the resident's violent history. Because these allegations do not allege any error or mistake related to any health care rendered to the resident, they are not time-barred.

A petition that states a ground for relief should not be dismissed in its entirety. Accordingly, the trial court erred in dismissing the petition in its entirety on the ground that section 516.105 time barred the negligence claims against the named supervisors because not all of the allegations were related to the delivery of health care to the resident. Therefore, we reverse and remand to the trial court for further proceedings consistent with our decision.

Opinion by Thomas H. Newton, Judge

April 24, 2012

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