Summary of SC100089, *Dane Templeton v. Charles Orth, D.O., and Orthopedic Surgeons Inc.*

Appeal from the Clay County circuit court, Judge David Paul Chamberlain
Argued and submitted October 17, 2023; opinion issued January 30, 2024

Attorneys: Templeton was represented by Brian F. McCallister of The McCallister Law Firm PC in Kanas City, (816) 931-2229. Orth and the orthopedic group were represented by BK Christopher and Matthew R. Klose of Horn Aylward & Bandy LLC in Kansas City, (816) 421-0700.

Several organizations filed briefs as friends of the Court. The Missouri State Medical Association, American Medical Association, and Chamber of Commerce of the United States were represented by Philip S. Goldberg and Cary Silverman of Shook, Hardy & Bacon LLP in Washington, D.C., (202) 783-8400, and Jennifer J. Artman of Shook, Hardy & Bacon LLP in Kansas City, (816) 474-6550. The Missouri Association of Trial Attorneys was represented by Leland F. Dempsey of Dempsey, Kingsland & Osteen PC in Kansas City, (816) 421-6868.

This summary is not part of the opinion of the Court. It is provided by 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 man appeals from a judgment in favor of a surgeon and orthopedic group after a finding the man's negligence claims were barred by the statute of limitations. In a 6-0 decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the circuit court's judgment. Templeton's claims were barred by the two-year statute of limitations. Even under the continuing duty of care doctrine, the man terminated his patient-physician relationship with the doctor surgeon when he sought a second opinion, received an alternative treatment plan from another doctor, and chose to follow that alternate plan by discontinuing the antibiotics the original doctor had prescribed without further consultation.

Facts: On September 16, 2012, Dane Templeton injured his right knee and thigh after being thrown from a golf cart. Dr. Charles Orth operated on Templeton's leg and provided follow-up evaluations over the course of several months in 2012. In 2015, Templeton returned to Orth for swelling in his knee. Orth operated on Templeton's knee again and prescribed an antibiotic. During an August 29, 2016, appointment, Orth prescribed Templeton a pain relief drug and told Templeton to return in a month. Templeton then made an appointment with an infectious disease doctor, who referred him to another orthopedic doctor, Dr. Michael Tilley, for a consultation. On September 7, 2016, Tilley reviewed Templeton's course of treatment and recommended Templeton either proceed with the antibiotic therapy as Orth prescribed or stop taking the antibiotics and, if things worsen, proceed with surgical debridements. Templeton elected to stop taking the antibiotics Orth prescribed, and his symptoms worsened. On October 11, 2016, Tilley performed surgery on Templeton's thigh after an MRI showed pieces of wood that had been left in his leg since the 2012 accident. Templeton continued seeing Tilley for postoperative care. He never returned to Orth. On October 9, 2018, Templeton sued Orth and Orthopedic Surgeons Inc., alleging negligence. Orth and the surgeons group asserted the statute of limitations as an

affirmative defense and moved for summary judgment (judgment on the court filings, without a trial). The circuit court sustained the motion, finding Templeton's claims were time barred. Templeton appeals.

AFFIRMED.

Court en banc holds: Templeton's claims are barred by the two-year statute of limitations. Under the doctrine of continuing care, the duty to attend the patient continues and, therefore, the statute of limitations is tolled, so long as required unless the physician-patient relationship is ended by the mutual consent of the parties, the physician's withdrawal after reasonable notice, the dismissal of the physician by the patient, or the cessation of the necessity that gave rise to the relationship. Templeton sought a second opinion from Tilley, received an alternative treatment plan from Tilley, and consciously chose to follow Tilley's plan by discontinuing the antibiotics Orth prescribed without further consultation with Orth. Based on these three actions, all of which indisputably occurred before October 9, 2016, the only reasonable inference is that Templeton intended to terminate his physician-patient relationship with Orth at that time. Accordingly, Templeton's suit was beyond the two-year statute of limitations when filed.