

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| RANDY L. WHITE and TAMMY SUE |) | No. ED92149 |
| WHITE, Appellants, |) | |
| |) | Appeal from the Circuit Court of |
| vs. |) | Jefferson County |
| |) | |
| MAZoor TARIQ, M.D., Respondent. |) | Filed: September 8, 2009 |

OPINION SUMMARY

Husband and wife, Randy L. White and Tammie Sue White (“Plaintiffs”), appeal from the judgment of the Circuit Court of Jefferson County dismissing their medical malpractice action against Dr. Manzoor Tariq (“Defendant”) for failing to timely file a health care affidavit as required by Section 538.225 RSMo (Cum. Supp. 2005). Plaintiffs contend that the trial court erred when it applied the 2005 amended version of Section 538.225 because: (1) their original petition was filed in August 2000, and the 2005 amendments to Section 538.225 therefore constitute an ex post facto law; (2) the dismissal did not advance Section 538.225’s purpose to protect the public and litigants from groundless malpractice claims; and (3) the dismissal amounts to an improper dismissal “with prejudice.”

AFFIRMED.

Division Two Holds: The trial court did not err in dismissing Plaintiffs’ action under Section 538.225 (Cum. Supp. 2005) because: (1) (a) Plaintiffs voluntarily dismissed their 2000 action without prejudice, and the 2005 amendments applied to Plaintiffs’ instant action filed on November 19, 2007, (b) Section 538.225 is procedural and therefore its application did not violate the ban on retrospective laws; (2) Section 538.225, under its clear and unambiguous terms, requires dismissal without prejudice where, as here, the plaintiff fails to timely file a statutorily adequate health care affidavit, and the defendant moves to dismiss on that basis; and (3) the trial court’s dismissal designated as “without prejudice” was not a dismissal “with prejudice” even though Plaintiffs may be otherwise barred by the statute of limitations from bringing another action against Defendant for the same cause.

Opinion by: Patricia L. Cohen, J. Sherri B. Sullivan, P.J., and Robert G. Dowd, Jr., concur.

Attorney for Appellants: James E. Bowles

Attorney for Respondent: Eric D. Martin

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| <p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p> |
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