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# Recent Developments: Garay v. Overholtzer: Statute of Limitations Not Tolled for Parental Claims for Medical Expenses during the Minority of an Injured Child

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## *Garay v. Overholtzer*

***STATUTE OF LIMITATIONS NOT TOLLED FOR PARENTAL CLAIMS FOR MEDICAL EXPENSES DURING THE MINORITY OF AN INJURED CHILD.***

In *Garay v. Overholtzer*, 332 Md. 339, 631 A.2d 429 (1993), the Court of Appeals of Maryland concluded that when a minor is negligently injured, not only do the parents have a cause of action for medical expenses incurred on behalf of the child, the child has a cause of action for personal injuries as well. The Maryland Rules, however, do not require joinder of the two separate claims. The ruling rejected any notion that the statute of limitations is tolled regarding parents' claims during the child's minority. In addition, the court affirmed its reluctance to recognize implied exceptions or strained interpretations of the statute of limitations.

On December 10, 1986, two and one-half-year old Reynaldo Augusta Garay was struck and injured by an automobile driven by Mildred Irene Overholtzer. Nearly five years later, a two-count complaint was filed by Reynaldo and his parents in the Circuit Court for Montgomery County. The first count, filed by Reynaldo through his mother as next friend, sought $1,000,000 in damages for personal injuries. The second count, filed by Reynaldo's parents, claimed $500,000 in damages for time and money spent on their son's recovery during his minority.

The circuit court dismissed the second count, finding the parents' claim barred by the statute of limitations. The following day an amended complaint containing a single count was filed by Garay claiming $1,000,000 for injuries to the minor and for monies spent on his behalf and by him during and after his minority. Again, the circuit court dismissed the claim. Reynaldo's parents filed appeals to the Court of Special Appeals of Maryland, but before the intermediate appellate court could consider the petition, the Court of Appeals of Maryland issued a Writ of Certiorari.

The court began its analysis by reaffirming the principle that two causes of action arise for an injury to a child: "the child's for the injury to the child and the parents' for the invasion of the parents' interests." *Overholtzer*, 332 Md. at 353, 631 A.2d at 436 (quoting *Korth v. American Family Insurance Co.*, 340 N.W. 494 (Wis. 1983)). However, the court rejected any notion that the Maryland Rules require compulsory joinder of parental claims for medical expenses with a minor's claim for personal injuries. 332 Md. at 353-55, 631 A.2d at 436-7. Consequently, parents' claims are not tolled by section 5-201 of the Courts Article of the Annotated Code of Maryland, which suspends the statute of limitations for an injured minor's claims during his minority. *Id.* at 355, 631 A.2d at 436.

Acknowledging that while Maryland's permissive joinder Rule, 2-212, allows for the joinder of claims, the court asserted that nothing in Maryland's compulsory joinder Rule, 2-211, requires the parents' claim for medical expenses to be joined with the child's for personal injuries in a single action. *Id.*, 631 A.2d at 436-7. Moreover, the court noted that Maryland Rule 2-211 essentially follows Federal Rule of Civil Procedure 19 and that "federal decisions generally manifest a pattern of not requiring joinder of parties who possess separate and distinct causes of action" even though all claims arose from a single transaction or occurrence. *Id.* at 356, 631 A.2d at 437. The court also noted that state courts addressing the same issue reached similar conclusions and that requiring joinder of claims for all claims resulting from the same transaction or occurrence would all but destroy the distinction between permissive and compulsory joinders. *Id.* at 357, 631 A.2d at 438. Hence, the parents' claim does not enjoy the protection of section 5-201. *Id.* at 354, 631 A.2d at 438.

Acknowledging parents are re-

quired by section 5-203 of the Family Law Article of the Annotated Code of Maryland to provide medical care to their children, the court recognized that when a minor child is negligently injured "the right to recover attendant medical expenses is vested in the parent." *Id.* at 360, 631 A.2d at 440 (*quoting Hudson v. Hudson*, 174 A.2d 339, 343 (Md. 1961)). However, by failing to file a claim within three years of the accident prior to the emancipation of the minor, the court maintained that the action was barred by the three year statute of limitations. 332 Md. at 360, 631 A.2d at 440.

Turning its attention to the issue of assignment, the court concluded that "even if parents could waive to their minor child their right to recover for ... medical expenses, the waiver in this case is similarly barred." *Id.*, 631 A.2d at 440. Assuming parents could surrender their right to recover for medical expenses to the child, the court found nothing in its research to indicate parents may do so after the applicable statute of limitations has run. *Id.* at 364, 631 A.2d at 442. In short, if parents choose to relinquish their claim to recover medical expenses to their child, they must do so within the limitations period. *Id.* at 365, 631 A.2d at 442. "To hold otherwise would extend the action to recover medical expenses vested in the parents beyond the applicable period of limitations." *Id.* at 359, 631 A.2d at 429. The court expressed an unwillingness to recognize exceptions to the statute of limitations not expressly provided for by the legislature. *Id.* at 353, 359, 631 A.2d at 439, 442.

Finally, the court noted that while the right of parents to recover medical expenses is based on the presumption that the parents are contractually obligated to pay for those expenses, that presumption is rebuttable. *Id.* at 366, 631 A.2d at 442. If a minor were liable for medical expenses, he should be allowed to recover those expenditures from a tortfeasor. *Id.*, 631 A.2d at 439. Undertaking a review of the doctrine of necessities, the court concluded there are circumstances in which a minor is contractually bound and "this liability will ... give a minor the right to claim medical expenses on his or her own behalf." *Id.* at 371, 631 A.2d at 445.

In conclusion, the court asserted that any claim for medical expenses incurred on behalf of an injured child by the parent made after the statute of limitations has run is barred. Also barred is any claim based on a theory of waiver. However, claims for expenses incurred after the minor reaches the age of majority clearly belong to him and section 5-201 of the Courts Article will toll the statute of limitations as to those claims. *Id.* at 374, 631 A.2d at 446. Nevertheless, if the minor can show his or her estate is or will be responsible for medical expenses incurred before the age of majority, section 5-201 operates and the statute of limitations will be tolled as to those expenses as well. *Id.*, 631 A.2d at 446.

Significantly, the Court of Appeals of Maryland in *Overholtzer* places parents on notice that their claims for medical expenses incurred due to the negligent injury of their child are not tolled during the minority of the child. Parents must file an action within the limitations period in order to retain their right to recover medical expenses. Furthermore, a waiver will not operate to toll the statute of limitations. Plaintiff parents may not turn an otherwise invalid claim into a valid one by waiving to their child their right to bring an action after the statute has run. Again, *Overholtzer* reiterates Maryland's reluctance to waive the statute of limitations absent clear legislative authority, allaying defendant fears of multiple and eternal lawsuits.

*- Robert Schulte*