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Piselli v. 75th St. Medical:

The Limitations Period for Bringing a Medical Malpractice Claim Does Not Commence Running Against a Minor Until He Reaches the Age of Majority

By: Bryan C. Hughes

The Court of Appeals of Maryland held that the limitations period for bringing a medical malpractice claim does not commence running against a minor's claim until he reaches the age of majority. *Piselli v. 75th St. Med.*, 371 Md. 188, 194, 808 A.2d 508, 511 (2002). Requiring otherwise, the court determined, would place an unreasonable restriction upon the remedies available to a child and a child's access to the courts in violation of Article 19 of the Maryland Declaration of Rights. *Id.* at 215, 808 A.2d at 523-24.

Christopher Piselli ("Christopher") first complained of pain in his left hip in August 1993. His father promptly took him to 75th St. Medical Center in Ocean City, Maryland where Dr. Lynn Yarborough examined him and determined that Christopher most likely pulled a hamstring muscle. Several days later, the injury was aggravated and Christopher was taken by ambulance to a hospital where it was found that Christopher had a fracture in his hip.

After a period of attempted rehabilitation, Christopher suffered a series of complications starting in the fall of 1993. Following surgery, doctors informed the family that Christopher had a permanent disability that would significantly

impair his ability to participate in certain activities and would require multiple surgeries.

In July 1998, Christopher's parents filed a medical malpractice claim in the U.S. District Court for the District of Maryland, individually and on behalf of Christopher, against 75th St. Medical Center and Dr. Yarborough. The jury acquitted Dr. Yarborough, but found that 75th St. Medical did not meet the requisite standard of care in treating Christopher, and that this deviation proximately caused Christopher's injury. The jury further determined that Christopher's parents discovered the injury to Christopher in November 1993, but Christopher did not discover the injury until 1999.

Following the jury's verdict, the district court ruled the action barred by the statute of limitations pursuant to Section 5-109 of the Courts and Judicial Proceedings Article. The court determined that the statute of limitations commenced running in November 1993 when Christopher's parents learned of the injury, and entered judgment for 75th St. Medical Center on that basis. The Piselli's appealed to the United States Court of Appeals for the Fourth Circuit, which certified the following question to the Court of Appeals of Maryland: "[W]hether,

when a claim is brought by parents on behalf of a child who was injured before reaching age eleven, the three-year statute of limitations of Section 5-109(a)(2) begins to accrue upon the discovery of the injury by the child or upon discovery of the injury by the parents." *Id.* at 193, 808 A.2d at 510-11.

The court of appeals recognized this as an issue of first impression in the State, the resolution of which was dispositive of the case. *Id.* at 197-98, 808 A.2d at 513. The action was filed within three years of the date Christopher discovered the injury, but more than three years after his parents' discovery. *Id.* Therefore, if the statute of limitations commenced from the time of Christopher's discovery of the injury, the jury's verdict would stand with regard to Christopher's claim, but if it began accruing from the time of the parent's discovery, the action was barred. *Piselli*, 371 Md. at 197-98, 808 A.2d at 513(2002)).

The court reformulated the question certified by the U.S. court of appeals to consider whether the limitations periods prescribed by Section 5-109 for the claim of a minor are "unreasonable restrictions upon a traditional remedy and the

minor's access to the courts and, therefore, are in violation of Article 19 [of the Maryland Declaration of Rights]." *Id.* at 207, 808 A.2d at 519. Article 19 prohibits unreasonable restrictions of remedies that are traditionally available to plaintiffs, and restrictions that limit a plaintiff's access to the courts. *Id.* at 207, 808 A.2d at 518.

In light of the reformulated question, the court looked to relevant case law. In *Garay v. Overholtzer*, the court recognized that a parent's cause of action and a claim brought on behalf of a child are distinct and separate. *Id.* at 209, 808 A.2d at 520 (citing *Garay v. Overholtzer*, 332 Md. 339, 631 A.2d 429 (1993)). In *Johns Hopkins Hosp. v. Pepper*, the court applied its decision in *Garay* to a medical malpractice claim brought on behalf of an infant child, holding that the doctrine of necessities protects a minor's right to recover medical expenses that his parents cannot afford to pay and for which the child may ultimately be liable. *Id.* at 210-11, 808 A.2d at 522 (citing *Johns Hopkins Hosp.*, 346 Md. 679, 697 A.2d 1358 (1997)). The court further noted the well-established principle in the State of Maryland that the statute of limitations typically does not begin running against a child until the child reaches the age of majority. *Id.* at 212, 808 A.2d at 522.

In consideration of these factors, the court determined that permitting the limitations period prescribed by Section 5-109 to begin accruing from the time of a

minor's injury would place "an unreasonable restriction upon a child's remedy and the child's access to the courts" pursuant to Article 19 of the Maryland Declaration of Rights. *Piselli*, 371 Md. at 215, 808 A.2d at 524 (2002). If allowed, the child's separate cause of action would be dependent upon his parents filing an action in a timely manner. *Id.* As a child is not able to bring a tort action on his own behalf until reaching the age of eighteen, the limitations period for the child's claim should not begin running until the child reaches that age. *Id.* at 215-16, 808 A.2d at 524.

The court of appeals held that the statute of limitations for a child's medical malpractice claim, as prescribed by Section 5-109 of the Courts and Judicial Proceedings Article, begins running when the child reaches the age of majority. In so holding, the court opens a door previously closed to children injured as minors whose claims were not filed in a timely manner by their parents.

In a climate already strained by the constantly rising costs of medical malpractice premiums, due in large part to exorbitant jury awards, this decision is likely to exacerbate the problem by dramatically increasing the number of potential plaintiffs. This decision reflects the court's conviction that the rights of children must be protected and should not be limited by the vigilance of their parents. Accordingly, a child's right to bring suit for tortious injuries suffered

during childhood is, in this decision, extended to an age in which the child is capable of making decisions in his own best interest.

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