



McKeen & Associates Case Wins Important Michigan Supreme Court Decision

JAY W. BELLE ISLE — November 8, 2021

Court's decision has long-term implications regarding medical malpractice statute of limitations.



Brian McKeen|

McKeen & Associates recently won an important decision in the Michigan Supreme Court in a medical malpractice wrongful death case brought on behalf of a Macomb County family.

Kelly Bowman (deceased) and her husband Vernon Bowman brought a medical malpractice suit in Macomb Circuit Court alleging failure to timely diagnose & treat breast cancer against St. John Hospital and Ascension Medical Group and Dr. Tusha Parikh in late 2016. The defendants claimed the lawsuit was filed past the two-year statute of limitations.

In 2013 Kelly Bowman discovered a lump in her breast. She presented to her OB/GYN who ordered a mammogram for Bowman. The

mammogram was performed by Ascension Medical Group on June 12, 2013, and on the same day the diagnostic radiologist, Dr. Parikh reached the erroneous conclusion that the mass was benign, whereas the lump was in fact malignant. Dr. Parikh did not advise Bowman or other appropriate healthcare providers that the mammogram was suspicious to allow follow-up testing as required by the standard of care.

Unfortunately, Bowman's breast cancer was allowed to grow and spread over the next two years and in late April of 2015, she was diagnosed with breast cancer. Bowman had no reason to question Dr. Parikh's representation that the mammogram findings were benign until she consulted with Dr. Citrin with the Cancer Treatment Centers of America in August of 2016, and he informed her that the mammogram should have been interpreted as being positive or suspicious of cancer. Eventually, Bowman underwent a double mastectomy, but testing revealed the cancer had spread to her bone marrow.

Bowman then filed suit against Dr. Parikh, St. John Hospital and Medical Center, and other entities alleging that Dr. Parikh was professionally negligent and that Dr. Parikh's professional negligence had caused a significant delay in the appropriate treatment of Bowman's cancer. Defendants sought dismissal of Bowman's claims in the trial court, arguing that Bowman's claims had been filed too late, and that the statute of limitations had expired. In response, Bowman argued that her claims had been timely filed under Michigan's 6-month discovery statute of limitations for medical malpractice claims. MCL 600.5838a(2).

The trial court denied defendants' motions to dismiss Bowman's claims. The defendants then sought leave to appeal the trial court's decision in the Court of Appeals. After granting leave to appeal, the Court of Appeals reversed the trial court's denial of summary disposition and remanded the case to the trial court for dismissal of Bowman's case.

Bowman then filed an application for leave to appeal the Court of Appeals ruling to the Michigan Supreme Court.

The Michigan Supreme Court reversed the Court of Appeals and disagreed with the defendants' claim that Bowman should have been aware of the cancer earlier. The case will now be set for trial against Dr. Tusha Parikh, St. John Hospital and Ascension Medical Group.

"This decision is significant for a number of reasons," said Brian McKeen, founder and managing partner of McKeen & Associates. "One, the court rightfully threw out arguments that patients should have more medical acumen and knowledge than their physicians. Patients should be allowed to rely upon the judgement of their physicians

and healthcare providers and should not be required to second-guess those judgements. It would be unfair to impose a responsibility upon the patient to have greater expertise than their physicians. This decision is a significant victory for patients seeking justice who did not learn that their doctor had been negligent until after the two-year-statute of limitations.”

“It should be noted that this opinion does not ‘extend’ the two-year statute of limitations,” said McKeen. “However, a patient may file a medical malpractice claim after two years as long as it is brought within 6 months of the date they discovered the basis for a medical malpractice claim as long as the claim is brought within Michigan’s 6-year statute of repose. Those who believe they or a loved one may have been harmed as a result of medical malpractice should contact McKeen & Associates, PC as soon as possible.”

McKeen & Associates, P.C. is a leader in representing individuals injured by the negligence of others particularly in or by hospitals and physicians. In addition, McKeen & Associates, P.C. has successfully represented clients injured in a variety of other circumstances. Based in Detroit, McKeen & Associates represents clients in both federal and state courts brought throughout Michigan and the United States. For more information, visit www.mckeenassociates.com.