



Client Alert



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Georgia Supreme Court Upholds Exemption of Med-Mal Actions From Statute of Limitations Tolling Statute

On July 23, 2010, in a 5-2 decision, the Supreme Court of Georgia rejected a constitutional challenge to a Georgia statute that exempts medical malpractice cases from the rule that statutes of limitation are tolled for those who are incapacitated due to mental disability. This decision upheld a ruling by the Glynn County State Court that a plaintiff's medical malpractice lawsuit was barred by the two-year statute of limitations. The Georgia Supreme Court's opinion relied heavily upon an opinion from the Eleventh Circuit Court of Appeals that rejected a similar challenge to O.C.G.A. § 9-3-73 in a related medical malpractice case.

The underlying action was brought on behalf of Kenneth Deen by his wife, Linda Deen. In 2005, Kenneth Deen visited a dental clinic due to an infected tooth where he was referred to Dr. Randolph Stevens, an endodontist. Dr. Stevens recommended a root canal and prescribed antibiotics. The next month, Kenneth Deen collapsed and was diagnosed with a brain infection that left him physically and mentally incompetent. He subsequently died in April 2009. Linda Deen filed her complaint against Stevens and his practice in March 2008 alleging professional negligence.

Dr. Stevens' attorneys filed a motion to dismiss because the lawsuit was filed after the two-year statute of limitations for medical malpractice actions. Under O.C.G.A. § 9-3-73, the two year state of limitations for medical malpractice actions also applies to those who are legally incompetent. In contrast, the Plaintiff's argument relied upon O.C.G.A. § 9-3-90, which tolls the applicable statute of limitations due to mental disability. However, O.C.G.A. § 9-3-90 applies to general civil actions and not medical malpractice actions. The Plaintiff argued that applying the non-tolling statute to her complaint violated her constitutional right to equal protection by discriminating against those persons with mental disabilities.

Writing for the majority opinion, Justice David Nahmias stated that "Georgia law generally tolls statutes of limitation during periods of mental incompetence . . . however, a statute first enacted in 1976 expressly excludes medical malpractice actions from the tolling provisions for mental incompetence." The Court stated that the Legislature's reasons for exempting medical malpractice cases from the tolling statute is to prevent the curtailment of medical services, stabilize insurance and medical costs,



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prevent stale medical malpractice claims, and provide for the public safety, health, and welfare as a whole. Nahmias noted that the U.S. Supreme Court had previously rejected the idea that legislation affecting the mentally disabled differently than other people should be reviewed by courts under a standard stricter than rational basis. As such, the Court held that it is logical to conclude that eliminating or reducing the number of exceptions to the statute of limitations will advance the intended goals of the Legislature.

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