



Ruther v. Kaiser, 2012 Ohio 5686 (Ohio 2012)

Topics Covered: Professional Liability, Tort Reform

Outcome: Very Favorable

Issue

The issue in this case was whether the Ohio Statute of Repose was constitutional as applied.

AMA Interest

Medical liability reform is the AMA's highest legislative priority.

Case Summary

George Kaiser, D.O., ordered laboratory tests for the liver enzymes of his patient, Timothy Ruther, in 1995, 1997, and 1998. In each instance, the tests showed abnormally elevated enzyme levels, but Dr. Kaiser allegedly did not share this information with Mr. Ruther. In 2008, Mr. Ruther was diagnosed with liver cancer and hepatitis C, and he then became aware, supposedly for the first time, of the earlier test results. He died shortly thereafter and his estate sued Dr. Kaiser for medical negligence.

The Ohio Statute of Repose, R.C. 2305.113(C), states: "No action upon a medical ... claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the ... claim." Based on this language, Dr. Kaiser moved for summary judgment, but the trial court denied his motion. It held that the statute, as applied to Mr. Ruther, violated a provision of the Ohio Constitution that "every person ... shall have remedy by due course of law." Since Mr. Ruther had not know of Dr. Kaiser's negligence, he had no way to obtain his legal remedy.

Dr. Kaiser appealed the trial court's denial of the motion for summary judgment and the finding of unconstitutionality, but the Ohio Court of Appeals affirmed. He then appealed to the Ohio Supreme Court.

On December 6, 2012, by a split decision and in a reversal of its own precedent, the Supreme Court reversed the Court of Appeals. It held that Mr. Ruther's cause of action was not a vested right, and therefore the legislature had the power to limit the cause of action by the statute of repose.

Litigation Center Involvement

The Litigation Center, along with the Ohio State Medical Association, filed an *amicus curiae* brief, asking the Ohio Supreme Court to accept jurisdiction of this case. After the Ohio Supreme Court accepted jurisdiction, the Litigation Center and OSMA filed another *amicus* brief in the Ohio Supreme Court on the merits. The brief argued that the Statute of Repose draws a reasonable balance between the rights of plaintiffs and of defendants and should therefore be upheld.

Ohio Supreme Court brief

Ohio Supreme Court merits brief