

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MAGGIE KNAUER,	:	APPEAL NO. C-180206
	:	TRIAL NO. A-1504130
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ABUBAKAR ATIQ DURRANI,	:	
	:	
and	:	
THE CHRIST HOSPITAL, INC.,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Maggie Knauer appeals the grant of judgment on the pleadings in favor of the defendants-appellees, Abubakar Atiq Durrani and the Christ Hospital, Inc. In two assignments of error, Ms. Knauer challenges both the grant of judgment on the pleadings and the denial of her motion for leave to file an amended complaint. Relying on this court’s recent decision in *Freeman v. Durrani*, 1st Dist. Hamilton No. C-180197, 2019-Ohio-3643, we accordingly overrule Ms. Knauer’s two assignments of error.

Ms. Knauer underwent cervical spine surgery with Dr. Durrani in May 2008 and subsequently suffered from severe pain in her neck and back. Seeking damages

for her injuries alleged as a the result of the surgery, Ms. Knauer filed suit in the Hamilton County Court of Common Pleas in April 2015, approximately six years after her surgery. Based on the time elapsed since her surgery and the filing of her suit, the defendants-appellees moved for judgment on the pleadings, which was ultimately granted. The court found that the claims were time barred by R.C. 2305.113(C)(1), which bars medical claims brought more than four years after “the act or omission constituting the alleged basis of the medical * * * claim.” R.C. 2305.113(C)(1). We review grant of a motion for judgment on the pleadings de novo. *Amadasu v. O’Neal*, 176 Ohio App.3d 217, 2008-Ohio-1730, 891 N.E.2d 802, ¶ 5 (1st Dist.).

On appeal, Ms. Knauer maintains that her claims against the defendants-appellees are valid and that R.C. 2305.113’s statute of repose should be subject to a judicially created fraud exception, equitable estoppel, or alternatively that the claims constitute independent fraud claims not subject to the statute of repose. In *Freeman*, however, we declined to adopt such a fraud exception where the legislature is capable of doing so and has declined. *Freeman* at ¶ 11 (“When viewed in light of the statutory scheme as a whole, it appears that the failure to include a fraud exception was not inadvertent.”); *Crissinger v. Christ Hospital*, 2017-Ohio-9256, 106 N.E.3d 798, ¶ 24 (1st Dist.) (lack of fraud exception in R.C. 2305.113 compared with fraud exceptions within other statutes of repose demonstrates legislature’s clear intent not to include such an exception). Similarly, we also reject Ms. Knauer’s equitable-estoppel argument. *See Freeman* at ¶ 24.

Furthermore, her claims fall under the broad umbrella of “medical claim” as defined by R.C. 2305.113(E)(3)(c). Medical claims include “[c]laims that arise out of the medical diagnosis, care, or treatment of any person” and “[d]erivative claims for

relief that arise from the medical diagnosis, care, or treatment of a person.” R.C. 2305.113(E)(3)(a), (c). We note that Ms. Knauer’s complaint categorizes the claims as relating to her treatment and therefore falling within the ambit of a “medical claim” as defined in the statute of repose. *See Freeman* at ¶ 23 (“Freeman’s claims of fraud are ‘medical claims’ within the statute of repose.”); *Young v. Durrani*, 2016-Ohio-5526, 61 N.E.3d 34, ¶ 24 (1st Dist.) (claim for fraud based on lack of informed consent was a “medical claim”); *Harris v. Ohio State Univ. Hosp. Med. Ctr.*, 10th Dist. Franklin No. 06AP-1092, 2007-Ohio-1812, ¶ 10 (“the statute’s definition of ‘medical claim’ does not permit us to split a fraud theory involving medical treatment off from a professional negligence claim involving medical treatment.”).

Citing the statute of repose’s bar to the claims, the court also denied as futile Ms. Knauer’s motion for leave to file an amended complaint. Based on the foregoing analysis any attempt at amending her claim would have been futile under the circumstances. *See Freeman* at ¶ 27. The genesis of Ms. Knauer’s claims were “medical” in nature and so barred by R.C. 2305.113(C); therefore the trial court did not abuse its discretion in denying the motion. *See Danopoulos v. Am. Trading II, LLC*, 2016-Ohio-5014, 69 N.E.3d 157, ¶ 23 (1st Dist.) (denial of a motion to amend a complaint based on futility is reviewed for abuse of discretion).

We therefore overrule Ms. Knauer’s two assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and BERGERON, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on September 18, 2019,
per order of the court _____.
Presiding Judge