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No. 67840-0

King County Superior Court No. 11-2-15367-3 SEA

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

REGIS J. COSTELLO, Individually and as Personal Representative for the Estate of
Maurice Costello, Pro Se
Plaintiff/Appellant,

v.

UNIVERSITY OF WASHINGTON MEDICAL CENTER; TERESA BRENTNALL,
M.D.; MELISSA HAGMAN, M.D.; CHRISTINE SCHLENKER, M.D.; AND JANE
DOE,
Defendants/Respondant.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

http://www.youtube.com/watch?v=oAd7ZCW_-cg

Respondents have intentionally concealed Maurice Costello's medical records and entered into the court records false information which should be provided to the Seattle Police authorities on April 5, 2012 for careful examination into probable cause for advancing a falsehood, fraud, and duress and obstruction of justice and possible manslaughter. The Statute of Limitation should be tolled indefinitely since records have been intentionally concealed by respondents and probable cause exists that crimes have been committed by the respondents. The Bellevue Police were called by some unknown entity and the Department of Social Health Services has refused to provide its investigation records to this date after multiple requests from The Estate of Maurice Costello and the personal representative for the estate, Regis Costello. The police report filed by Bellevue Police detective Robert Thompson contains false information and erroneous entries. This court should remand the case back to King County Superior Court.

ASSIGNMENT OF ERROR

1. The court erred by failing to recognize the Discovery Rule on intentional concealment and omission of records.
2. The court erred by dismissing the case on statute of limitations under RCW 4.16.350.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Negligent misrepresentation of facts surrounding the percutaneous endoscopic gastrostomy PEG procedure started with the physicians orders for life sustaining treatment (POLST) and Certification for Patient Transfer to Alternate Facility at Kline Galland being signed by Melissa Hagman, M.D. on June 13, 2007. The POLST form was fraudulently created and concealed until January 26, 2012, which forced Maurice Costello to transfer to Kline Galland under criminal duress in attempt to conceal the PEG placement done in error at University of Washington Medical Center. Did the court err in dismissing the Costello's suit when the POLST form was intentionally omitted and concealed from all records? Did the court err in dismissing the suit when records showing the PEG tube being pierced through the colon and into the stomach have been intentionally concealed and omitted?
2. False information continues to be cultivated by Respondent as all records have not been provided. Did the court err by dismissing the case on statute of limitations when defendants presented the Declaration of Sally Beahan containing the false statement that all records were provided in all requests for records? The declaration

was presented less than 48- hours prior to the hearing before The Honorable Judge Bruce Hilyer on September 23, 2011.

3. Respondents continue to cloud the fact that there were complications during the June 12, 2007 PEG procedure that led to Teresa Brentnall, M.D. and Chistine Schlenker, M.D. and Melissa Hagman, M.D. and Jane Doe to prolong the time to carry out the procedure, which under normal conditions takes less than thirty minutes to complete. The length of time it took on June 12, 2007 was near one hour and thirty minutes as they tried to pull the PEG out of the gastric lumen and completely through both walls of the pierced colon. The attempt at fixing the error was not successful but instead they discharged Maurice on June 13, 2007 when they had knowledge or should have known Maurice was not being fed with the PEG tube in his colon. Did the court err in accepting the negligent misrepresentation of facts with the continued misuse of the term “migration” of the PEG from the stomach to the colon?

RESTATEMENT OF THE CASE

This case was brought under the State of Washington Resident Record – Required for WAC 388-76-10315(1)(h). There is probable cause that Maurice Costello was criminally deprived of his medical records and discharged without proper notice WAC 388-76-10615(1)(2).

2012 by Kline Galland. This POLST is conflicting and fraudulent as it shows different orders from that POLST signed by Daniel Raskind, M.D., which caused Maurice to move under criminal duress from Kline Galland to Ansara Family Home on July 17, 2007. Respondents forced Maurice to move knowing he was not being fed. **See Affidavit of Michael Reid**

3. Respondents falsely state that Maurice died at Kline Galland when in fact Maurice was forced to move from Kline Galland under criminal duress to Ansara Family Home on July 17, 2007. Maurice died January 24, 2008 at his residence on 6806 So. 133rd St. Seattle.

4. Respondents falsely state that Regis Costello phoned the Bellevue Police Department to conduct an investigation into why the records were not being released when in fact Regis Costello phoned Department of Social Health Services in October 2007 not the Bellevue Police Department. An unknown entity phoned the Bellevue Police Department which failed to provide the medical records for over a year after the first request made on July 17, 2007, and some records arrived August 2008. *Penilla v. City of Huntington Park*, 115 F.3d 707 (9th Cir.1997) (per curiam)(state created danger exception claim viable where police officers who, after finding plaintiff in grave need of medical care on his front

porch, cancelled a 911 call for paramedics, put him back in his home, and locked him inside).

The Department of Social Health Services failed to provide the investigation records after repeated requests by the Estate of Maurice Costello as evidenced in the most recent letter from the Attorney General of Washington dated March 2, 2012 and letter to Governor Christine Gregoire dated March 27, 2012.

ARGUMENT

The statutory discovery rule for a medical malpractice action provides that where the defendant has engaged in intentional concealment, the limitations period is one year from actual knowledge of the fraud or concealment. RCW 4.16.350(3); see *Webb v. Neuroeducation, Inc.*, 100 Wn. App. 336, 345, 88 P.3d 417 (2004). The operation of the statute is tolled indefinitely where there is intentional concealment. *Webb v. Neuroeducation, Inc.*, 100 Wn. App. 336, 345, 88 P.3d 417 (2004). This exception “is aimed at conduct or omissions intended to prevent the discovery of negligence or of the cause of action.” The statute of limitations should be tolled indefinitely because the records have been intentionally concealed and the physicians order for life sustaining treatment (POLST) was not included in all records that were provided since 2008. Regis Costello requested all images in four separate

requests and the only image that has come forward was a small scope image that does not show the PEG pulled from the gastric lumen. The University of Washington Medical Center and Teresa Brendnall, M.D., Christine Schlenker, M.D., and Melissa Hagman, M.D. and Jane Doe pulled the PEG from the gastric lumen on June 12, 2007 and discharged Maurice on June 13, 2007 while suffering from malnutrition as noted in expert physician testimony from Allen J. Telmos, M.D. The diagnosis could have been easily confirmed by an upper GI endoscopy, which would reveal that the PEG tube no longer resided within the gastric lumen, or colonoscopy, which would show the PEG in the transverse colon.

The Declaration of Sally Beahan was presented to the King County Superior Court on September 19, 2011 and did not give Regis Costello adequate time to review the false claims being made in her declaration. The declaration was received on September 21, 2011 less than 48- hours prior to the hearing scheduled before The Honorable Judge Bruce Hilyer. This declaration was used as the basis for the decision by Judge Hilyer to dismiss the case on statute of limitations but the declaration was false. Regis Costello has asked for all records including all images pertaining to Maurice Costello and his Percutaneous Endoscopic Gastrostomy PEG procedure on June 12, 2007. With all formal requests for records made by

Regis Costello, the records were concealed in all four requests and still remain concealed. Regis Costello has recently discovered a fraudulently presented physicians order for life sustaining treatment (POLST) which was not included in all records released to this date by University of Washington Medical Center and Sally Beahan.

In addition, Regis Costello has still not received the records from Department of Social Health Services pertinent to the citations issued to Ansara Family Home, LLC. and failing to provide resident records on request and improperly discharging Maurice by dropping him off at Overlake Hospital Emergency. In a letter dated March 2, 2012 by Assistant Attorney General John Nicholson, he reiterated that a court order would be needed to gain access to the records.

Providence Marianwood also used the same strategy as Ansara Family Home, LLC to avoid the care responsibility for Maurice when Maurice visited Valley Medical Center for verification that a diagnosis for pneumonia was false. When Providence Marianwood was confronted on the error and its misdiagnosis, Providence Marianwood refused to allow Maurice to return to his residence there. Again, UWMC and Providence Marianwood obtained a signature by deception RCW 9A.60.030 causing Maurice Costello to relocate under duress.