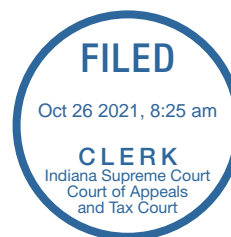


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Robert Kadrovach,
Appellant-Petitioner,

v.

Anonymous Health Care
Providers,
Appellee-Respondent.

October 26, 2021

Court of Appeals Case No.
21A-MI-993

Appeal from the Marion Superior
Court

The Honorable Patrick J. Dietrick,
Judge

Trial Court Cause No.
49D12-2101-MI-3329

Weissmann, Judge.

[1] After Robert Kadrovach’s medical malpractice claim against Anonymous Health Care Providers was dismissed as time-barred, he filed a motion for relief from judgment alleging that the providers had engaged in fraud that prevented him from fully and fairly pleading his case at trial. The motion was denied, and Kadrovach appeals. We affirm.

Facts

[2] Kadrovach, an inmate at Miami County Correctional Facility, alleges that he first informed prison medical staff that his implanted defibrillator’s battery was dying in February 2016. He says he repeated these concerns in March and May of 2017, but Doctors Carl Kuenzli, Noe Marandet, and Anonymous Healthcare Provider C (collectively, Providers) failed to act. On May 17, 2017, Kadrovach claims he died in Providers’ care but was “zapped back to life” by his defibrillator. Appellant’s App. Vol. II, pp. 46-47. He says that when he was hospitalized one month later, he finally received emergency surgery to replace the implant.

[3] Kadrovach promptly filed a notice of tort claim alleging malpractice but did not file his proposed complaint until June 1, 2020—3 years after the incident. Because Indiana Code § 34-18-7-1 bars tort claims against healthcare providers filed more than 2 years after the date of the alleged malpractice, Doctors

Kuenzli and Marandet moved to dismiss. The trial court granted this motion as to all Providers on March 12, 2021.¹

- [4] Kadrovach filed a Trial Rule 60(B)(3) motion for relief from judgment on April 20, 2021, which the trial court denied the next day. Kadrovach then filed a notice of appeal on May 20, 2021.

Discussion and Decision

- [5] Kadrovach's appeal focuses on the trial court's denial of his Trial Rule 60(B)(3) motion, in which he alleged Providers fraudulently misrepresented their coverage under the Medical Malpractice Act, thereby vitiating the 2-year statute of limitations. The basis of his allegation is a February 8, 2021, letter from the Indiana Patient's Compensation Fund, which listed only one of the three Providers as covered under the Act. Appellant's App. Vol. II, p. 101. It is not obvious if Kadrovach argues the Patient Compensation Fund letter *exposed* the fraud or that it *was* the fraud. Regardless, we fail to comprehend how this letter, even if mistaken as to the providers' statuses, impacted Kadrovach's ability to meet the May 17, 2019, statute of limitations. He filed his complaint 14 months late, and 8 months prior to the date of the letter containing the alleged fraud. We agree with the trial court that Kadrovach's Trial Rule 60(B)(3) was moot.

¹ There appears to have been some confusion as to whether Doctors Kuenzli and Marandet's counsel also represented Anonymous Healthcare Provider C at trial. Because Kadrovach does not raise this issue, we do not address it.

[6] “[Trial Rule] 60(B) is meant to afford relief from circumstances which could not have been discovered during the period a motion to correct error could have been filed.” *Bello v. Bello*, 102 N.E.3d 891, 894 (Ind. Ct. App. 2018).

Accordingly, “[a]ny issue which was raised by or could have been raised by timely motion to correct errors and timely direct appeal may not be subject of motion for relief from judgment.” *Cullison v. Medley*, 619 N.E.2d 937, 945 (Ind. Ct. App. 1993).

[7] Kadrovach actually knew about the alleged fraud within the 30-day post-judgment period during which a motion to correct error could have been filed. *See* Ind. Tr. R. 59(A). The proper vehicle for Kadrovach’s argument was therefore a direct appeal, not a motion for relief from judgment. *See Cullison*, 619 N.E.2d at 945.

[8] But Kadrovach missed his window for a direct appeal. He filed his 60(B) motion approximately one week after the deadline for filing a timely direct appeal expired. *See* Ind. Appellate Rule 9(1) (requiring filing of notice of appeal within 30 days of judgment being appealed). A Trial Rule 60(B) motion is not a substitute for direct appeal. *In re Paternity of P.S.S.*, 934 N.E.2d 737, 740 (Ind. 2010). The trial court properly rejected Kadrovach’s improper attempt to make it one.

[9] Accordingly, we affirm the trial court’s denial of Kadrovach’s 60(B)(3) motion.

Mathias, J., and Tavitas, J., concur.