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Recent Developments: McCready Memorial Hospital v. Hauser: Claimant's Attempt to Obtain Automatic Extension for Filing Expert's Certificate Pursuant to the Maryland Health Care Malpractice Claims Statute Not Triggered by Mere Request under § 3-2A-04(b)(1)(ii)

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Id. Second, while Maryland has recognized a limited claim for loss of the economic value of a child's services, the court declined to recognize a reciprocal loss of parental services claim on behalf of minor children. *Id.* at 286, 623 A.2d at 661-62.

By permitting a personal injury

plaintiff to recover damages for lost income, the Court of Appeals of Maryland eliminated the general rule that a plaintiff cannot recover for the "lost years" of a shortened life expectancy caused by a defendant's negligence. However, by refusing to allow recovery of damages for the tort

victim's children under a "lost years" theory, and refusing to recognize alternative theories of recovery, the court of appeals has made it clear that tort victims and their families have specific means of seeking recovery that the judiciary is not willing to expand.

-Kelly Reaver

***McCready Memorial Hospital
v. Hauser***

***CLAIMANT'S ATTEMPT TO
OBTAIN AUTOMATIC EXTENSION
FOR FILING EXPERT'S
CERTIFICATE PURSUANT TO
THE MARYLAND HEALTH
CARE MALPRACTICE
CLAIMS STATUTE NOT TRIGGERED
BY MERE REQUEST
UNDER § 3-2A-04(b)(1)(ii).***

In *McCready Memorial Hospital v. Hauser*, 624 A.2d 1249 (Md. 1993), the Court of Appeals of Maryland recently held that a claimant instituting an action under the Maryland Health Care Malpractice Claims Statute and attempting to obtain an extension to file the required certificate of qualified expert under Md. Cts. & Jud. Proc. Code Ann. § 3-2A-04(b)(1)(ii) must actually file the expert's certificate within 180 days from the initial filing of the action. The court concluded that a 90-day extension was automatic in a narrow class of cases, however, merely requesting a § 3-2A-04(b)(1)(ii) extension is not the proper path a claimant should take.

On March 14, 1990, five days before the statute of limitations was to run on their claim, John and Maxine Hauser filed a claim with the Health Claims Arbitration Office ("HCAO") pursuant to the Maryland Health Care Malpractice Claims Statute, Md. Cts. & Jud. Proc. Code Ann. § 3-2A-04(b)(1). The Hausers named the Edward J. McCready Memorial Hospital and two doctors who had consulted with Mrs. Hauser as defendants. They alleged that the doctors had negligently diagnosed her condition, allowing a cancerous tumor to go untreated. McCready Memorial Hospital was to be held vicariously liable for the acts of the doctors.

While the Hausers' "claim was timely filed, [they] failed to file an

expert's certificate with the HCAO within 90 days as required by § 3-2A-04(b)(1)(i). . . ." *Id.* at 1251-52. After the filing period had expired, the defendants filed motions to dismiss, asserting that the Hausers had failed to comply with the filing requirements of § 3-2A-04(b)(1)(i). Not until July 3, 1990, 21 days after the 90-day filing period had expired, did the Hausers respond to the motions to dismiss. *Id.* at 1252. An expert's certificate was not filed; however, the Hausers requested a 90 day extension pursuant to § 3-2A-04(b)(1)(ii), which reads:

(ii) In lieu of dismissing the claim, the panel chairman shall grant an extension of no more than 90 days for filing the certificate required by this paragraph, if:

1. The limitations period applicable to the claim has expired; and
2. The failure to file the certificate was neither willful nor the result of gross negligence. *Id.*

The Hausers contended that they came under the ambit of § 3-2A-04(b)(1)(ii), asserting that the statute of limitations had run and their failure to file an expert's certificate was neither willful nor the result of gross negligence. *Id.*

At a hearing on October 17, 1990, over 200 days after the Hausers filed their claims, the HCAO Panel Chair dismissed the claims for failure to file an expert's certificate or request an extension within the initial 90-day

period following the filing of their claim. *Id.* Dissatisfied with the action taken by the HCAO, the Hausers brought suit in the Circuit Court for Wicomico County in an attempt to challenge the orders and findings of the HCAO. The defendants moved to dismiss, but the Hausers argued that § 3-2A-04(b)(1)(ii) created a mandatory extension for filing the expert's certificate, and that the HCAO had erred in rejecting their request for an extension. The circuit court granted the defendants' motions to dismiss the Hausers' claims and ruled that the Hausers had already received their required 90-day extension, as the HCAO did not dismiss their claims until 37 days after the total 180-day period had expired. *Id.*

The Hausers appealed and the court of special appeals reversed the decision of the circuit court. Though the court of special appeals agreed that the 90-day extension under § 3-2A-04(b)(1)(ii) was mandatory in cases where the statute of limitations had run and where the failure to file the expert's certificate was not willful or grossly negligent, it held that the Hausers never received their 90-day extension. *Id.* at 1252-53. The intermediate appellate court opined that the second 90-day period could not have begun until the Hausers received notice of the HCAO's decision on their motion for an extension.

The court of appeals granted certiorari to interpret § 3-2A-04(b)(1)(ii). The court began its analysis by referring to a basic canon of statutory interpretation which states that "[i]n construing a legislative enactment the fundamental judicial task is to determine and effectuate the legislature's intent . . ." *Id.* at 1253 (quoting *Scheve v. Shudder*, 328 Md. 363, 371, 614 A.2d 582, 586 (1992)). Further, "a provision contained within an integrated statutory scheme must be understood in that context and harmonized to the extent possible with

the other provisions of the statutory scheme." *Id.* (quoting *Baltimore Gas & Electric v. Public Service Comm'n*, 305 Md. 145, 157, 501 A.2d 1307, 1313 (1986)).

The court of appeals then turned its attention to the defendants' contention that the court of special appeals erred in not following *Robinson v. Pleet*, 76 Md. App. 173, 544 A.2d 1, *cert. denied*, 313 Md. 689, 548 A.2d 128 (1988), a case with a fact pattern analagous to the Hausers' claims. *Id.* However, the issue in *Robinson* was the timing of a request for a "good cause" extension to file an expert's certificate under § 3-2A-04(b)(5), not a § 3-2A-04(b)(1)(ii) extension. In *Robinson*, the court of special appeals interpreted the then-existing version of § 3-2A-04(b)(1) as requiring dismissal of a claim where an expert's certificate was not filed or a request for an extension was not made within 90 days of initiating a claim, without giving the claimant an opportunity to rectify the defect. *Id.* Relying on *Robinson*, the defendants reasoned that since the Hausers had failed to request an extension under § 3-2A-04(b)(1)(ii) within 90 days, they were not entitled to an extension. *Id.*

The court of appeals rejected the defendants' arguments and stated that their reliance on *Robinson* was incorrect, as § 3-2A-04(b)(5) was not at issue in the Hausers' claim. *Id.* at 1253-54. Furthermore, the court noted that § 3-2A-04(b)(1)(ii), the extension provision at issue in the Hausers' claims was enacted by the General Assembly in response to the harsh result of the *Robinson* case. *Id.* at 1254. The court stated that § 3-2A-04(b)(1)(ii) was to be applied in the narrow class of cases in which a claimant has filed an expert's certificate after both the initial 90-day period and the statute of limitations had run. *Id.*

Applying this interpretation of §

3-2A-04(b)(1)(ii) to the Hausers' claims, the court of appeals nevertheless reversed the decision of the court of special appeals and held that a request for an extension "does not entitle a claimant to a 90-day additional filing period commencing whenever the claimant receives notice that an extension has been granted." *Id.* at 1255. The 90-day extension is automatic, does not require a request, and begins upon the expiration of the initial 90-day period only when the expert's certificate is filed within the 90-day extension period. *Id.* The expert's certificate must be filed within 180 days of initiating the claim.

The court of appeals concluded that § 3-2A-04(b)(1)(ii), while automatic, was intended to commence immediately following the expiration of the initial 90-day period. *Id.* at 1256. This extension is subject to a defendant's motion to dismiss, where the defendant must show that the 90-day period does not apply because the claimant's failure to file an expert's certificate was willful or grossly negligent. *Id.* at 1257. Since the Hausers never filed an expert's certificate and their mere request for an extension during the initial 90-day period did not result in the automatic extension under § 3-2A-04(b)(1)(ii), the court concluded that the Hausers' claim was correctly dismissed by the circuit court.

Through its decision in *McCready Memorial Hospital v. Hauser*, the court of appeals clarified the application of the 90-day extension period contained in § 3-2A-04(b)(1)(ii). Parties bringing claims before the HCAO are now aware that merely requesting an extension under § 3-2A-04(b)(1)(ii) will not result in an automatic extension. In order to benefit from the extension, the expert's certificate must be filed within 180 days of initiating the action.

Jim Delorenzo