

1986

Jennifer Chapman, by and through her guardian,
Teresa Chapman, Robert Chapman and Teresa
Chpman, individually v. Primary Children's
Hospital, a hospital organized to do business in the
State of Utah, et al. : Unknown

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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860230

Mr. Geoffrey J. Butler
Court Clerk
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Re: Chapman v. Primary Children's Hospital, et al.
Appeal No. 860230

Dear Mr. Butler:

Recently, the appellants in the above-referenced action filed a letter containing supplemental authorities and "explanations" as to what those authorities stood for. Pursuant to Rule 24(j) of the Rules of the Supreme Court, I am responding to that letter. By way of response and supplementation, I believe the following additional authorities are also relevant to this matter:

Forbes v. St. Mark's Hosp., 754 P.2d
933 (Utah 1988).

Blum v. Stone, 752 P.2d 898 (Utah 1988)

Brower v. Brown, 744 P.2d 1337 (Utah
1987)

Sorenson v. Larsen, 740 P.2d 1336
(Utah 1987)

Hargett v. Limberg, 801 F.2d 368
(10th Cir. 1986)

Utah Code Ann. § 78-11-6 (1977)

Utah Code Ann. § 75-5-209 (1977)

I must strongly disagree with Mr. Hesse's representation in his November 18, 1988 letter as to what the Blum opinion stands for. The Blum opinion does not stand for the proposition that Utah Code Ann. § 78-14-4 "is

December 2, 1988

Page 2

nullified when applied to minors." The decision held that although an earlier decision (Scott v. School Board, 568 P.2d 746 (Utah 1977) had nullified the effect of that section for a short period of time, the 1979 amendment to Utah Code Ann. § 78-14-4 was adopted "with a view to defeating the effect of the tolling provisions. . . ." Id. at 900.

As explained by the Supreme Court in Blum, the 1979 amendment "evinced the Legislature's determination to apply the medical malpractice statute of limitations to all plaintiffs' claims including those of minors." Id. (Emphasis added.) See Respondent's Brief at pp. 13-15. Indeed, Blum stands for the proposition that the 1979 amendment to Utah Code Ann. § 78-14-4 is effective to bar all medical malpractice actions based on alleged acts of negligence occurring prior to the amendment and not filed within four years of the effective date of the amendment (May 8, 1979). Although I realize that Rule 24(j) specifies that letters of supplementation should be written "without argument," I felt it necessary to respond to the arguments made in the appellants' letter.

Both the Forbes case and the Brower case are recent decisions which stand for the proposition that both the two-year and four-limitation periods set forth in Utah Code Ann. § 78-14-4, are valid and enforceable in medical malpractice actions. The Sorenson decision contains the Supreme Court's reaffirmation that issues raised for the first time on appeal will not be addressed by the Supreme Court, and that actions must be commenced within four years of the incident which allegedly caused the plaintiff's injury. See Respondent's Brief at pp. 13-15.

The Hargett decision is a Tenth Circuit Court of Appeals decision which gives the federal court's interpretation of Utah Code Ann. § 78-14-4. It indicates, as does the Blum decision, that the 1979 amendment to Utah Code Ann. § 78-14-4 will allow suits based on injuries occurring prior to May 8, 1979, to only be filed for four years following that date. The Court explained that such suits filed after that date were time-barred pursuant to the referenced statute. See Respondent's Brief at pp. 13-15.

As to the statutes cited, Utah Code Ann. § 78-11-6 indicates that a parent or guardian may maintain an action for the death or injury of a minor child when such injury or death is caused by the wrongful act or neglect of another. Utah Code Ann. § 75-5-209 indicates that a guardian of a minor has the same powers and responsibilities of a parent. See Respondent's Brief at pp. 13-15 and 28-29.

December 2, 1988

Page 3

Pursuant to Rule 24(j), I have enclosed nine copies of this letter and also sent separate copies to all counsel of record. Thank you for your consideration and assistance in this matter.

Very truly yours,

RICHARDS, BRANDT, MILLER
& NELSON



Michael L. Schwab

MLS/sm

cc: All counsel of record