SUPREME
NOV 26 1975

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 760569

GAIL D. HURDLE,

Appellant

v.

WARNER PRINZ, M. D., et al,

Appellee

RECORD NO. 761095

BARBARA J. FOELAK,

Appellant

GEORGE MEIHM,

Appellee

JOINT APPENDIX

Laurence G. Roman,
ROMAN, DAVENPORT, LECHNER,
SEIFMAN AND SANDO
8320 Old Courthouse Road
Vienna, Virginia 22180

Counsel for Appellant,
Gail D. Hurdle

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

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IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

GAIL D. HURDLE,
Appellant

versus

WARNER PRINZ, M. D.,
et al,

Appellees

RECORD NUMBER 760569

AND

BARBARA J. FOELAK,
Appellant

versus

GEORGE MEIHM

Appellee

RECORD NUMBER 761095

JOINT APPENDIX

CONSOLIDATED AGREED STATEMENT OF FACTS

The Appellant, Gail D. Hurdle, was born July 13, 1954. On approximately October of 1961, she was treated by Appellee, Warner Prinz, M.D., and was admitted to the Arlington Hospital, also Appellee herein, on or about October 30, 1961. The alleged

malpractice herein occurred as a result of treatment by Appellees at that time. Appellant attained age eighteen (18) on July 13, 1972. In legislation effective July 1, 1972, the General Assembly enacted Code Section 1-13.42 which changed the age of majority from twenty-one (21) to eighteen (18). On September 10, 1974, Appellant filed a Motion For Judgment in the Circuit Court of Arlington County, Virginia against Appellees herein.

GAIL D. HURDLE,)

Plaintiff,)

vs.) AT LAW NO. 17313

WARNER PRINZ, M.D.)
3213 Columbia Pike
Arlington, Virginia)

and)

THE ARLINGTON HOSPITAL)
1701 North George Mason Drive
Arlington, Virginia)

Defendants.

MOTION FOR JUDGMENT

COMES NOW the plaintiff, Gail D. Hurdle, by counsel, and moves this Court for judgment against the defendants, jointly and severally, in the sum of $2,000,000.00, with interest and costs, and as grounds therefore, represents as follows:

1. The defendant, Warner Prinz, M.D., at all times material herein, is and was a physician duly licensed in the Commonwealth of Virginia, and practicing medicine in Arlington County, Virginia.

2. The defendant, The Arlington Hospital, at all times material herein, is and was a hospital open for the care and treatment of patients in the County of Arlington, Virginia.

3. On or about the 30th day of October, 1961, defendant Prinz held himself out to the general public and to the plaintiff in particular as a medical physician and practitioner skilled in the care of patients, and particularly skilled in the diagnosis, care, and treatment of patients.

4. That on or about October 30, 1961, the defendant, Arlington Hospital held itself out to the general public as an institution whose function was to care for, treat, and otherwise attend to patients admitted to the hospital.

JOSEPH C. GWALTNEY, Clerk
Deputy Clerk D. C.
Writ Tax $25.00
Fee 30.00
Deposit 2.50
Total Paid $57.50
Plaintiff's Exhibit

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AND LEWIS, LTD.

5. On or before the 30th day of October, 1961, the plaintiff was an infant of tender years and through her father engaged and presented herself to the above named defendants so that she would be examined, diagnosed, and treated for the medical conditions presented.

6. That the defendants, individually and jointly, agreed and undertook and owed the duty to the plaintiff to skillfully treat, care for, and attend to the plaintiff and to render all necessary and proper medical care, treatment, and attention.

7. Not withstanding the aforesaid agreement and undertakings and the duties imposed thereby, defendant Prinz, while acting within the scope of his undertaking as a physician, breached his duty to the plaintiff and negligently failed to carefully and skillfully care for and tend to the plaintiff; negligently failed to diagnose the medical condition of the plaintiff; negligently failed to consult with physicians skilled in diagnosis; negligently failed to attend to and carefully treat the patient's condition; negligently failed to exercise that degree of care and skill commensurate with the duties of reasonable and prudent physicians in the area in which they were practicing; and the defendant, Warner Prinz, M.D., was otherwise negligent.

8. Notwithstanding the aforesaid agreement and undertakings and the duties imposed thereby, the defendant, Arlington Hospital, while acting within the scope of his undertaking as a hospital, breached its duty to the plaintiff and negligently failed to carefully and skillfully care for and tend to the plaintiff; negligently failed to take proper precautions with respect to the medical condition of the plaintiff known to the hospital; negligently failed to warn the plaintiff and/or defendant Prinz concerning the urinalysis taken of the defendant; negligently failed to exercise that degree of care and skill commensurate with the duties of a reasonable and prudent hospital in the area in which it was located; and the defendant, Arlington Hospital was otherwise negligent.

9. As the direct and proximate result of the negligence of the defendants, jointly and severally, as aforesaid, plaintiff has suffered a total and permanent loss of her kidneys.

10. As the direct and proximate result of the negligence of the defendants, jointly and severally, the plaintiff has suffered and will in the future continue to suffer pain, suffering, embarrassment, humiliation, and mental anguish; multiple and serious physical injuries; plaintiff has suffered, still suffers and in the future will continue to suffer great mental shock and anguish; she has incurred and will in the future incur substantial expenses for medical treatment and therapy, and she will be adversely affected in all aspects of her future life; plaintiff was insane and rendered incompetent from April, 1972, through November, 1973; the plaintiff has suffered grand mal seizures; plaintiff's kidneys have been irrevocably and permanently damaged and she requires dialysis five times weekly to sustain her life; and the plaintiff has otherwise been injured and damaged.

WHEREFORE, the plaintiff, Gail D. Hurdle, prays that this Honorable Court enter judgment against the defendants, jointly and severally, in the sum of TWO MILLION AND NO/100 ($2,000,000.00) DOLLARS, together with interest and her costs in these proceedings.

GAIL D. HURDLE

By _____
Of Counsel

LEWIS, WILSON, COWLES,
CUMMINGS AND LEWIS, LTD.
2054 North 14th Street
Arlington, Virginia 22201

By _____
Oren R. Lewis, Jr.
Counsel for Plaintiff

GAIL D. HURDLE,

Plaintiff

vs.

WARNER PRINZ, M.D.
and
THE ARLINGTON HOSPITAL,

Defendants

AT LAW NO. 17313

FILED

OCT 7 1974

JOSEPH C. GWALTNEY, Clerk
Circuit Court, Arlington County, Va.
By [signature] Deputy Clerk

ANSWER AND GROUNDS OF DEFENSE

COMES NOW the Defendant, Arlington Hospital, by counsel, and for its answer and grounds of defense to the motion for judgment previously exhibited against it herein states and alleges as follows:

1. The allegations appearing in paragraph numbered 1 and 2 of Plaintiff's motion for judgment will be admitted.

2. Defendant neither admits nor denies the allegations in paragraph three of the motion for judgment and demands strict proof thereof.

3. The allegations appearing in the fourth numbered paragraph will be admitted.

4. This defendant will neither admit or deny the allegations in paragraph 5 of the motion for judgment, but demands strict proof thereof.

5. As they are phrased, the duties having reference to this co-defendant, as embodied in the sixth numbered paragraph, will be denied.

6. The allegations appearing in paragraph numbered 7 are neither admitted or denied, and strict proof is demanded.

7. The allegations appearing in paragraph numbered 8 will be denied.

8. The allegations in paragraphs numbered 9 and 10 will all be denied.

AND NOW by way of further answer and grounds of defense, it is herewith stated by this co-defendant that the plaintiff is barred from the maintenance of this action by the expiration of the appropriate statute of limitations to the extent that the case in full ought to be dismissed. It is

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further affirmatively alleged that the plaintiff has slept upon her rights to the severe detriment of this co-defendant based upon the fact that many years have expired since this co-defendant last had an occasion to treat the plaintiff and that this co-defendant should not be called upon to defend itself within the context of this lawsuit for such would be a deprivation of its basic and fundamental rights. This co-defendant will assert further that it has met all of the duties incumbent upon it in law in the extension of services to the plaintiff, was not negligent in the implementation of its services and is not responsible in any regard to her.

WHEREFORE the premises considered, this defendant moves for the dismissal of the action against him and for costs in his behalf expended.

THE ARLINGTON HOSPITAL

By Griffin T. Garnett III
Counsel

GARNETT & KOSTIK
2000 N. 16th Street
Arlington, Virginia 22216

By: Griffin T. Garnett III
Griffin T. Garnett, III
Counsel for Defendant, The Arlington Hospital

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Grounds of Defense was mailed, postage prepaid, this 7th day of October, 1974, to Norman F. Slenker, Esquire, 1012 N. Utah St., Arlington, Virginia 22201, Counsel for Defendant, Warner Prinz, M.D.; and to Oren R. Lewis, Jr., Esq., Counsel for Plaintiff, 2054 N. 14th Street, Arlington, Virginia.

Griffin T. Garnett III
Griffin T. Garnett, III

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& KOSTIK
16TH ST.
N, VA. 22216

GAIL D. HURDLE, :

Plaintiff :

v. : AT LAW NO. 17313

WARNER PRINZ, M. D. :
and
THE ARLINGTON HOSPITAL :

Defendants :

FILED

OCT 2 1974

JOSEPH C. GWALTNEY, Clerk
Circuit Court, Arlington County, Va.
By [illegible] Deputy Clerk

ANSWER AND GROUNDS OF DEFENSE

COMES NOW defendant Warner Prinz, M. D., by counsel, and for his answer and grounds of defense to the motion for judgment previously exhibited against him herein states and alleges as follows:

1. The allegations appearing in paragraphs numbered 1 and 2 of plaintiff's motion for judgment will be admitted.

2. The allegations in paragraph numbered 3 will be admitted also except that this defendant affirmatively states that he did not hold himself out to the general public, or to the plaintiff in particular, as having any more skills or being more particularly skilled in the areas mentioned than the average of those in the community practicing medicine at the same time and in the same manner and general line of practice.

3. The allegations appearing in the fourth numbered paragraph have reference to the co-defendant and need not be answered herein.

4. This defendant will admit that he was asked to see the plaintiff when she was an infant of tender years on an isolated basis for a specific complaint which had reference to "croup"

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NNINGS & O'NEAL
NORTH UTAH STREET
GTON, VIRGINIA 22201
522-4078

and that she was treated for that condition, improved, and thereafter did not require any specific medical care or attention for that condition.

5. As they are phrased, the duties having reference to this co-defendant, as embodied in the sixth numbered paragraph, will be denied.

6. The allegations appearing in paragraph numbered 7 will be denied in toto.

7. The allegations appearing in paragraph numbered 8 need no response from this co-defendant since they have reference to the co-defendant Arlington Hospital.

8. The allegations in paragraphs numbered 9 and 10 will all be denied.

AND NOW by way of further answer and grounds of defense, it is herewith stated by this co-defendant that the plaintiff is barred from the maintenance of this action by the expiration of the appropriate statute of limitations to the extent that the case in full ought to be dismissed. It is further affirmatively alleged that the plaintiff has slept upon her rights to the severe detriment of this co-defendant based upon the fact that some 14 years have expired since this co-defendant last had an occasion to see the plaintiff and that this co-defendant should not be called upon to defend himself within the context of this lawsuit for such would be a deprivation of his basic and fundamental rights. This co-defendant will assert further that he met all of the duties incumbent upon him in law in the

extension of services to the plaintiff, was not negligent in the implementation of his services and is not responsible in any regard to her.

WHEREFORE the premises considered, this defendant moves for the dismissal of the action against him and for costs in his behalf expended.

Warner Prinz

Warner Prinz, M.D., by counsel

INTERROGATORIES

TO: Gail D. Hurdle
c/o Oren R. Lewis, Jr., Esq.
2054 North 14th Street
Arlington, Virginia

COMES NOW defendant Warner Prinz, M.D., by counsel, and pursuant to the provisions of Rule 4:8, Supreme Court of Virginia calls upon the plaintiff to answer the following continuing interrogatories, separately and in writing, under oath, within 21 days after service upon her attorney, and you are reminded that these interrogatories are continuing in nature so that you shall file amended or additional answers should different or more current information come to your/your attorney's attention:

1. Please give the names, addresses and dates of every physician who have seen the plaintiff or administered to her from October 1961 on up until the present time.

2. If the plaintiff was hospitalized since October 30, 1961 and indeed prior to that time, please indicate the dates of such confinement, the situation in which she was confined and the particular physician or physicians who caused the confinement.

3. Please set forth your current address and indicate with whom you reside, how long you have lived there and give the addresses with whom you have resided from the month of October 1961 on up until the present time.

4. Please disclose the medical condition for which your father presented you to the defendants in this case , as is set forth and alleged in the 5th numbered paragraph of the motion for judgment.

5. Please disclose the facts and the evidence upon which you will rely which you contend shows that Dr. Prinz was negligent in the many respects set forth in the 7th numbered paragraph of the motion for judgment. As to each of those specifications set forth the evidence you will rely upon in support of the contention that Dr. Prinz either did something that was not within the standard of medical care, or failed to do something that you contend was within the standard of medical care prevailing at the time in question.

6. Please describe the "medical condition" which you allege in the 7th numbered paragraph was not diagnosed by Dr. Prinz.

7. Please set forth the facts and circumstances surrounding your allegation in paragraph 10 that you were insane and rendered incompetent from April 1972 through November 1973. In this connection set forth the place at which the incompetency was rendered, particularly the forum, if it was a judicial action, the names of those who imposed the Commission adjudicating your insanity and set forth all of the details in connection with that incident as well as places of confinement, if any, and the period of such confinement.

8. Please set forth the details as to how the adjudication of insanity was terminated, giving case numbers or other documentation with reference to judicial proceedings or otherwise if such be involved.

9. Please give the date, time and place of your birth.

Warner Prinz

Warner Prinz, M. D. by counsel

SLENKER, BRANDT, JENNINGS & O'NEAL

By Norman F. Slenker

Norman F. Slenker
Attorney for defendant Prinz

CERTIFICATE

I hereby certify that a true copy of the foregoing has been mailed, postage prepaid, to Oren R. Lewis, Jr., Esq., counsel for the plaintiff, 2054 N. 14th Street, Arlington, Va. and to Arlington Hospital, 1701 N. George Mason Drive, Arlington, Va. 22205, this 1st day of October 1974.

Norman F. Slenker

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' PLEA
OF THE STATUTE OF LIMITATIONS

COMES NOW the plaintiff, by counsel, and files this Memorandum in Opposition to defendants' Plea to the Statute of Limitations.

I. STATEMENT OF FACTS

The facts and circumstances of the matter before this Court are quite unusual, and one for which no precedent may be found. There probably will not be another like it. At the time of the medical malpractice complained of, the plaintiff was barely seven years old. Since that time, her physical condition has progressively degenerated. Her kidneys no longer function at all, she lives day-to-day by the grace of kidney dialysis. She has been hospitalized dozens of times, frequently on the threshold of death. Heart attacks, grand mal seizures, severe hypertension, and fear of death have so marked what little true life she has had, that she is in a constant state of debilitive depression.

Gail Hurdle was born July 13, 1954. From that time to present, many events beyond her control have occurred. In October of 1961, she was treated by defendant Prinz who negligently failed to diagnose her condition, and defendant Arlington Hospital who attended and cared for her in a negligent manner. As a result of the defendant's joint and several negligence, Gail's kidneys were ravaged and stopped functioning. In January of 1964, she had the first of her many hospitalizations.

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LEWIS &
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VA. 22216

In April of 1972, she experienced her first grand mal seizure along with severe uremia poisoning and hypertension. She subsequently had several cardiac arrests, strokes, pneumonia, severe hemorrhaging, and many surgical procedures and extended admissions to various intensive care units. Her mental and physical condition remained so distressed, that a planned removal of her kidneys was postponed.

Gail was insane and in a state of total depression and was withdrawn and hostile from early 1972 until November of 1973. During this crucial period of time she was absolutely unable to care for herself or to make any rational decision. She even refused to take life-saving medication on several occasions. She did not have sufficient mental capabilities to understand or conduct her ordinary affairs.

Her period of insanity began when she was under 18 years old, and it lasted until she was over 19 years old. Prior to this span, the law of Virginia provided that she could bring suit until July 13, 1977. [Two years after reaching the age of 21 (Virginia Code Sections 8-24, 8-30, 1-13.42)]. While she was insane, the age of majority was reduced to 18 years. (Virginia Code Section 1-13.42). She remained in this state until November of 1973, and thereafter, she filed suit against the defendants in early September, 1974.

II. ARGUMENT

The only basis that defendants could possibly have to assert the defense of the Statute of Limitations is that effective July 1, 1972, the age of majority was reduced to 18 years. As is shown in the discussion below, the suit was filed timely and is not barred by the Statute of Limitations. The new law respecting the age of majority may not be applied to adversely affect any right which has accrued. Alternatively, the plaintiff was under the disability of insanity at the time her right of action would have otherwise accrued.

A. Gail Hurdle Did Not Reach Her Majority Until July 13, 1975, After Suit Was Filed.

In early 1972, Gail Hurdle was insane, and remained in that state until November of 1973. She was unable to comprehend and make decisions concerning her own life because of the devastating physical and mental impairments she was then suffering.

During that time, until July 1, 1972, Section 1-13.42, Code of Virginia, provided that the age of majority was 21 years. She was then only 17. On July 1, 1972, however, the age of majority was reduced to 18 years. Thus, on July 13, 1972, when Gail had her 18th birthday, she had a "right of action."

The change in the Code respecting the age of majority had no effect as against the plaintiff. Her cause of action arose when the age of majority was 21 years. Statutes are to be given a prospective construction rather than retrospective. Ferguson v. Ferguson, 169 Va. 77, 192 S.E. 774 (1937). Section 1-16, Code of Virginia, clearly provides that:

> "No new law shall be construed to repeal a former law, as to ... any right accrued ... or in any way whatever to affect ... any right accrued ...."

This Code section clearly prescribes the rule of construction to be applied so that the right accrued to the plaintiff may not be affected in any way. At the time the cause of action arose, she had the right to bring suit until her 23rd birthday (majority plus two years). A new law cannot effect this right under Code Section 1-16.

In the case of Whitlock v. Hawkins, 105 Va. 242, 53 S.E. 401 (1906), the Court held:

> "Retrospective laws are not favored, and a statute is always to be construed as operating prospectively, unless a contrary intent is manifest ..."

Gail Hurdle had a vested right to bring suit against the defendants until she was 23 years old (majority plus two years). Though reducing the age of majority, the new law cannot affect her vested right. Therefore, the suit filed by the plaintiff was timely.

B. Alternatively, The Right of Action by the Plaintiff Did Not Accrue Until November of 1973.

If this Court should rule that the Statute of Limitations began to run on Gail's 18th birthday, then it must carefully construe the language of the statutes involved. The important operative terms are "right of action" which is to be distinguished from "cause of action."

> "A right of action is the right to presently enforce a cause of action." 1 Am. Jur. 2d, Actions, Sec. 2, p. 541. See Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257, 259 (1969).

Gail Hurdle did not have the right to presently enforce her cause of action until she reached her majority. She could not bring suit on her own, but only by next friend. Kilbourne v. Kilbourne, 165 Va. 87, 181 S.E. 351 (1935), Va. Code 8-87. Therefore, until she reached her majority, Gail had only an inchoate right which she herself could not assert.

> "The essential elements of a good cause of action ... are a legal obligation of a defendant to the plaintiff, a violation or breach of that right or duty, and a consequential injury or damage to the plaintiff." Caudill v. Wise Rambler, Inc., 210 Va. 11, 168 S.E.2d 257, 259 (1969).

Section 8-24 of the Virginia Code refers to accrual of "right of action", not of the cause of action. Section 8-30 provides that the statute does not run if a person is under a disability at the time the "right of action" accrues.

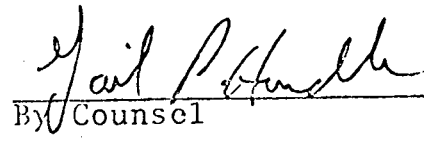
Thus, while the cause of action arose in 1961, the "right of action" did not accrue until she reached her majority. If the court decides that she reached her majority respecting this lawsuit at the age of 18, then at that time she was under the disability of insanity. The statute could not run while she was insane (Sec. 8-30), thus it did not begin until November of 1973, when the disability was removed.

Section 8-30 is designed to afford protection to those who are unable to assert their own rights. It should be liberally construed in favor of one seeking its protection.

III. CONCLUSION

Your plaintiff, Gail Hurdle, respectfully submits that defendants' Plea of the Statute of Limitations be denied.

GAIL D. HURDLE



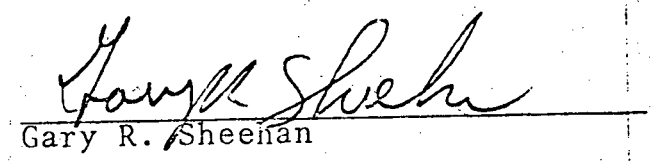
By Counsel

LEWIS, WILSON, COWLES,
LEWIS AND JONES, LTD.
2054 North 14th Street
Arlington, Virginia 22201

By
Gary R. Sheehan
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have hand-delivered a true copy of the foregoing to all counsel for defendants, this the 12th day of December, 1975.



Gary R. Sheehan

POINTS OF AUTHORITIES

PURSUANT to the Court's request of the 12th day of December, 1975, the Defendant, THE ARLINGTON HOSPITAL, by counsel, attaches a copy hereto of pertinent authorities in this matter found in Burke's Pleading and Practice. Counsel also attaches hereto pertinent discussion on the subject found in 53 ALR 1316. Also, counsel for THE ARLINGTON HOSPITAL attaches hereto a copy of 210 Va. 11 in its entirety and takes exception to Plaintiff's counsel's interpretation of said case and calls the Court's attention to that part of the case that states as follows:

> "Her right to recover damages for personal injuries accrued at the time she was injured."
>
> and
>
> "...plaintiff's right of action for damages for personal injuries accrued at the time of his injuries and that a suit brought within two years thereafter was within the period fixed by Code § 8-24." (Emphasis supplied.)

Finally, as to the question of whether there is a distinction between a voluntary and an involuntary disability, counsel for THE ARLINGTON HOSPITAL would call the Court's attention to the case previously cited by counsel for WARNER PRINZ, M. D., of Sharp v. Stevens (1899) found at 21 Kentucky L Rep 687, 52 SW 977, in which the Court would not allow an infant to tack on the disability of insanity to that of infancy. This is identical to the case before us. Counsel for THE ARLINGTON HOSPITAL finds no identical Virginia case but would call the Court's attention to the old Virginia case of Fitzhugh v. Anderson, et al found at 2 Henning & Munford 288 in which the Court held that when the act of limitations once begins to run, its operative does not cease by the intervention of infancy, coverture or any other legal

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N. 16TH ST.
TON, VA. 22216

disability (emphasis supplied) and to the United States Supreme Court case of McDonald v. Hovey 110 U.S. 619, in which the Court would not allow the disability of imprisonment to apply after infancy had run.

WHEREFORE, the Defendant, THE ARLINGTON HOSPITAL, prays that its plea to the Statute of Limitations be granted and that it be awarded Summary Judgment in its behalf.

THE ARLINGTON HOSPITAL

By: Griffin T. Garnett, III
Its Counsel

GARNETT & KOSTIK

By: Griffin T. Garnett, III
Counsel for The Arlington Hospital

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid, this 15th day of December, 1975 to Oren R. Lewis, Esq., counsel for Plaintiff, 2054 N. 14th Street, Arlington, Virginia and to John K. Coleman, Esq., counsel for Defendant Warner Prinz, M.D., 1012 North Utah Street, Arlington, Virginia 22201.

Griffin T. Garnett, III

Circuit Court of Arlington County
Virginia

WILLIAM L. WINSTON
JUDGE
PAUL D. BROWN
JUDGE
CHARLES S. RUSSELL
JUDGE
CHARLES H. DUFF
JUDGE

December 16, 1975

WALTER T. MCCARTHY
JUDGE RETIRED

COURT HOUSE
ARLINGTON, VIRGINIA

Gary R. Sheehan, Esquire
Lewis, Wilson, Cowles,
Lewis and Jones, Ltd.
P. O. Box 827
Arlington, Virginia 22216

John Coleman, Esquire
Slenker, Brandt, Jennings & O'Neal
1012 N. Utah Street
Arlington, Virginia 22201

Griffin T. Garnett, III, Esquire
Garnett & Kostik
2000 N. 16th Street
Arlington, Virginia 22201

Re: At Law No. 17313
Murdle v. Prine, et al.

Gentlemen:

A review of all the authorities cited by counsel in this case leads to the conclusion that the plea of the Statute of Limitations should be sustained and the case dismissed.

The cases in Virginia appear to hold that there may be no "tacking" of successive disabilities. Whitehurst, et al. v. Duffy, 181 Va. 637. The right of action accrues when the damages are sustained. Only disabilities then existing may be relied upon.

The disability of insanity was not permitted to be added to that of infancy in the case of Sharp v. Stephens' Committee, 52 S.W. 977 (Ct. of App. Ky., 1899).

The only reference which came to my attention concerning the voluntariness or involuntariness of the second disability was found in the annotation appearing in 53 A.L.R. On page 1327, we find the following:

> "It follows, from the cases already commented upon, that a subsequent disability, arising after removal of the one existing when the cause of action arose, cannot be tacked to the earlier one and so extend the time within which to bring suit. If a disability existing at the time the cause of action accrued be once removed, the statute continues to run, regardless of subsequent disabilities, voluntary or involuntary. (Citations) And the statute continues to run regardless of whether the subsequent disability is voluntary or involuntary."

Counsel for the defendants should prepare an order sustaining the plea and dismissing the case.

Very truly yours,

William L. Winston
Judge

WLW:kw

ORDER OF DISMISSAL

THIS MATTER came on to be heard on the 12th day of December, 1975 upon the Motion for Judgment filed herein and upon the Answers and Pleas to the Statute of Limitations filed by the Defendants, WARNER PRINZ, M.D. and THE ARLINGTON HOSPITAL; upon the Points of Authorities of counsel and was argued by counsel; and

IT APPEARING TO THE COURT that the Plaintiff was born on July 13, 1954, and that, from the Plaintiff's pleadings, the alleged medical malpractice and negligence of the Defendants occurred in October of 1961. Further, from the Plaintiff's pleadings, the Plaintiff was allegedly insane and incompetent to handle the ordinary affairs of her life from April of 1972 to November of 1973; and

IT FURTHER APPEARING TO THE COURT that the General Assembly of the Commonwealth of Virginia reduced the age of majority to 18 years effective July 1, 1972 (§1-13.42, Code of Virginia, 1950, as amended). And it further appearing to the Court that the Plaintiff filed her Motion for Judgment against the Defendants on September 10, 1974 and that the said Motion for Judgment was filed beyond the period allowed by law and that the Defendants' Plea to the Statute of Limitations should be granted;

IT IS therefore ADJUDGED AND ORDERED that the Plea to the Statute of Limitations of the Defendants WARNER PRINZ, M.D. and THE ARLINGTON HOSPITAL be and hereby is granted and the Plaintiff's Motion for Judgment is dismissed with prejudice and Plaintiff's exception to the Court's ruling is noted.

The Clerk of the Court is hereby directed to forthwith issue a certified copy of this Order to all counsel of record.

THIS ORDER IS FINAL

ENTERED THIS 5th day of January, 1976.

JUDGE

V OFFICES
TT & KOSTIK
N. 16TH ST.
ON, VA. 22216

WE ASK FOR THIS:

Griffin T. Garnett, III
Counsel for the Defendant, The Arlington Hospital

Joan K. Coleman, Counsel for the Defendant, Warner Prinz, M.D.

SEEN, OBJECTED TO AND EXCEPTION NOTED:

Gary R. Sheehan, Counsel for the Plaintiff, Gail D. Hurdle

A COPY,

TESTE: JOSEPH C. GWALTNEY, Clerk

By Mary V. Taylor
Deputy Clerk

FEB 1976
JOHN T. FRALINLY, Clerk
By: Deputy Clerk

NOTICE OF APPEAL
AND
ASSIGNMENTS OF ERROR

NOTICE OF APPEAL

TO: WARNER PRINZ, M.D.
c/o Norman F. Slenker, Esquire
1012 North Utah Street
Arlington, Virginia 22201

and

THE ARLINGTON HOSPITAL
c/o Griffin T. Garnett, III, Esquire
2000 North 16th Street
Arlington, Virginia 22201

PLEASE TAKE NOTICE that the plaintiff will appeal to the Supreme Court of Virginia the Order of the above-styled Court, per Judge William E. Winston, entered on the 5th day of January, 1976, upon the error assigned below.

ASSIGNMENTS OF ERROR

PLEASE TAKE NOTICE that the plaintiff assigns the following as error:

1. That the Order of the trial court is contrary to the law of Virginia.

2. That the Court below erred in holding that the plaintiff's right was barred by the Statute of Limitations.

3. That the Court below erred in construing the date

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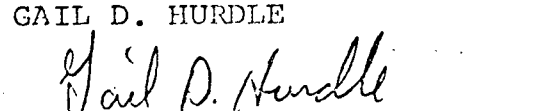
from which the applicable period of limitations began to run.

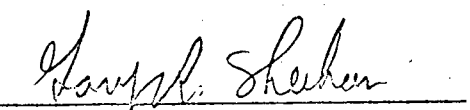
4. That the Order of the trial court is contrary to the evidence presented.

GAIL D. HURDLE



By Counsel

LEWIS, WILSON, COWLES,
LEWIS & JONES, LTD.
2054 North 14th Street
Arlington, Virginia 22216

By 
Gary R. Sheehan
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a true copy of the foregoing Notice of Appeal and Assignments of Error to Norman F. Slenker, Esquire, 1012 North Utah Street, Arlington, Virginia 22201, counsel for defendant, Prinz, and to Griffin T. Garnett, III, Esquire, 2000 North 16th Street, Arlington, Virginia 22201, counsel for defendant, Arlington Hospital, this the 3rd day of February, 1976.

GARY R. SHEEHAN