

**IN THE COURT OF APPEALS OF IOWA**

No. 2-780 / 12-0319  
Filed April 10, 2013

**BARBARA J. LIGHTFOOT,**  
**Administrator of the ESTATE OF**  
**DONALD L. PETERSON, and**  
**BARBARA J. LIGHTFOOT,**  
**Individually,**  
Plaintiff-Appellant,

**vs.**

**CATHOLIC HEALTH INITIATIVES-**  
**IOWA CORP., d/b/a MERCY HOSPITAL**  
**MEDICAL CENTER, DES MOINES,**  
**IOWA, and JOSE ANGEL, M.D.,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

The plaintiff appeals from a district court ruling granting the defendants'  
motions for summary judgment. **AFFIRMED.**

S.P. DeVolder of The DeVolder Law Firm, Norwalk, for appellant.

Barry G. Vermeer, Loree A. Nelson, and Henry A. Parkhurst of Gislason &  
Hunter, L.L.P., Des Moines, for appellee Angel.

Steven Scharnberg and Erik P. Bergeland of Finley, Alt, Smith,  
Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee hospital.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

**VAITHESWARAN, P.J.**

Barbara Lightfoot, administrator of her husband's estate, contends the district court erred in concluding her medical malpractice lawsuit against a hospital and physician was not filed within the two-year statute of limitations.

***I. Background Facts and Proceedings***

Barbara Lightfoot's husband Donald Peterson was admitted to Mercy Hospital Medical Center, where he was treated by Dr. Jose Angel. Peterson died on July 25, 2009, after undergoing an emergency surgery to remove a gallstone.

Lightfoot filed a wrongful death action against Mercy and Dr. Angel on April 7, 2011, purportedly in her capacity as the administrator of her husband's estate. See *Wendelin v. Russell*, 147 N.W.2d 188, 191 (Iowa 1966) ("[A]ny right to damages for wrongful death accrues to the administrator of a decedent's estate, the surviving husband or wife having no standing to sue for same in an individual capacity."), *overruled on other grounds by Lewis v. State*, 256 N.W.2d 181, 189 (Iowa 1977). It soon became apparent that an estate had not been opened and, consequently, Lightfoot was not administrator of Peterson's estate at the time the lawsuit was filed. Lightfoot rectified the problem and obtained a letter of appointment on August 15, 2011.

The next day, she moved to substitute herself in her capacity as the estate's administrator and moved for leave to amend the petition to allege she was now the duly appointed administrator of Peterson's estate. The defendants moved for summary judgment on the ground that the two-year statute of limitations applicable to medical malpractice actions expired on July 25, 2011, two years after the date of Peterson's death. Because Lightfoot did not become

administrator of the estate and did not move to substitute herself as duly appointed administrator until after July 25, 2011, they asserted Lightfoot's amended petition was time-barred. See Iowa Code § 614.1(9) (2011).

In response, Lightfoot conceded her substitution could not "relate back to the time of filing the petition," which was within the two-year limitations period. See *Estate of Dyer v. Krug*, 533 N.W.2d 221, 224 (Iowa 1995) ("The petition shows that at the time this action was commenced, [the plaintiff] did not have the capacity to sue. Therefore, this action did not toll the statute of limitations. Any later appointment will occur after the limitations period has run . . . . [T]hat appointment will not relate back.").<sup>1</sup> She argued, instead, that the two-year period only began to run when she discovered the wrongful act that caused her husband's death. That date, she asserted, was eleven to eighteen months after his death. Accordingly, she urged the court to find that her substitution motion and motion to amend were timely, and summary judgment for the defendants was not appropriate.

The district court disagreed with Lightfoot and ruled as follows:

The statute of limitations expired on July 25, 2011, at the latest, two years after the date Donald Peterson died. Because she did not open an estate and was not appointed administrator prior to the expiration of the statute of limitations, she had no authority to act as administrator of the estate.

. . . It is too late to now amend the Petition.

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<sup>1</sup> The court noted that plaintiffs suing in an individual capacity could have sought an amendment to sue in a representative capacity but did not. *Krug*, 533 N.W.2d at 225; see also *Gardner v. Beck*, 189 N.W. 962, 966 (Iowa 1922) (positing that if the "plaintiff had brought an action in his own name for the wrongful death of his wife, he might have obtained leave of the court to amend by substituting himself as administrator as party plaintiff," and "[s]uch an amendment would not be barred by the statute of limitations . . . but the right to file the same would be subject to the judicial discretion of the court").

The court granted the defendants' summary judgment motions. Lightfoot appealed.

## ***II. Analysis***

Iowa Code section 614.1(9)(a), the statute of limitations for medical malpractice actions, provides that actions “founded on injuries to the person or wrongful death against any physician . . . arising out of patient care” must be brought “within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first.”

The precise question presented in this case—whether the statute of limitations for medical malpractice actions based on wrongful death begins to run on discovery of death or on discovery of the wrongful act that caused the death—was decided in *Schultze v. Landmark Hotel Corp.*, 463 N.W.2d 47, 48 (Iowa 1990).

As in this case, the plaintiffs filed their medical malpractice lawsuit more than two years after Schultze died. *Schultze*, 463 N.W.2d at 48. The district court concluded the statute began to run when the “plaintiff received the medical records pertaining to the care and treatment rendered by the defendant-physicians and learned of the alleged acts of medical malpractice.” *Id.* On appeal, the Iowa Supreme Court rejected that argument holding “that the limitation period in subsection 9 commences on the date the death is discovered.” *Id.* The court reasoned the language of the statute “plainly

communicates that malpractice actions for wrongful death must be brought within two years after the claimant knew of the death.” *Id.* at 49.

*Schultze* is controlling. Lightfoot indisputably knew of her husband’s death on July 25, 2009. The clock began ticking on that date. Because Lightfoot did not sue the hospital and physician in her capacity as administrator within two years, her action was time-barred and the district court did not err in granting summary judgment for the defendants. See Iowa R. Civ. P. 1.981(3) (stating summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law).

Lightfoot tries to limit or distinguish *Schultze* based on subsequent case law. In light of our conclusion that *Schultze* is controlling, we find it unnecessary to navigate this minefield.

We affirm the district court’s grant of summary judgment for the defendants.

**AFFIRMED.**