

Day v. American Medical Response, et al.
Hearing Date: July 1, 2026
Demurrer (FAC)/CMC

23CV02707

Parties:

Plaintiff: Lindsey Day by Darin Spiegel (Roberts & Spiegel LLP)

Defendant: American Medical Response West by Loren Leibl (Leibl, Miretsky, & Mosely LLP)

PROPOSED TENTATIVE

The issue before the court is whether the first cause of action in the first amended complaint (advanced as a survivor cause of action) relates back to the first cause of action in the original complaint (advanced as medical malpractice) for statute of limitations purposes. The court anticipated this very problem at the time it determined defendant's summary judgment motion; the parties are directed to examine the court's October 30, 2024, order in detail. The parties ignore this in their briefing, with plaintiff simply contending that throughout "the pendency of this matter, Plaintiff's counsel has always maintained this matter is both a survivor and a wrongful death action. This fact has been discussed on multiple occasions between counsel for the parties in the court of settlement." Did the parties discuss this issue with the court as raised in the October 30, 2024, order? What was determined? The court is not told.

Here will be the result – if the parties discussed the matter, and plaintiff agreed that only a wrongful death cause of action was intended, then plaintiff will be estopped from advancing a survivor cause of action in the first amended pleading, as the court will take judicial notice of the transcript in which plaintiff's counsel made this concession, and thereafter sustain the demurrer without leave to amend. If, on the other hand, plaintiff indicated that a survivor cause of action was intended, or if the issue was not discussed at all, the court will determine the survivor cause of action relates back to the first cause of action for medical malpractice, meaning the cause of action is not barred by the statute of limitations, and the demurrer will be overruled.

The parties are directed to reread the October 30, 2024, order, appear at the hearing, and be prepared to discuss this matter in detail.