IN THE SUPREME COURT OF GUAM

VICTORIA S. CUSTODIO, individually and as Guardian Ad Litem for Teresita S. Custodio, an invalid; ESTRELLA C. HERNANDEZ, individually and as Guardian Ad Litem for Teresita S. Custodio, an invalid; and BENJAMIN A. CUSTODIO, Plaintiffs-Appellants, vs. **VALLOP BOONPRAKONG, MD., et al.** Defendants-Appellees.	)	Supreme Court Case No. **CVA 97-040 and CVA97-042** Superior Court Case No. **CV0207-95**
VICTORIA S. CUSTODIO, individually and as Guardian Ad Litem for Teresita S. Custodio, an invalid; ESTRELLA C. HERNANDEZ, individually and as Guardian Ad Litem for Teresita S. Custodio, an invalid; and BENJAMIN A. CUSTODIO, Plaintiffs-Appellants, vs. **KWAN-MING CHEN, MD. and KWAN-MING CHEN AND ASSOCIATES,** Defendants-Appellees.	)	Superior Court Case No. **CV1607-96** **OPINION**

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Appeal from the Superior Court of Guam

Hagåtña, Guam

Argued and Submitted on February 18, 1998

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS[1] and BENJAMIN J.F. CRUZ, Associate Justices

SIGUENZA, CJ.:

[1] Appellants seek review of the trial court's decision granting summary judgment in favor of the Appellees. They assert their medical malpractice suit is not barred by the statute of limitations. Alternatively, appellants argue that the statute of limitations was tolled by the insanity exception.

[2] We disagree. Based on the facts before this court and the applicable law, we deny Appellants' request for relief and, accordingly, we affirm the trial court's decision.

I.

[3] On February 7, 1994, Teresita Custodio entered the Guam Memorial Hospital to undergo a hysterectomy. Five days after Dr. Vallop Boonprakong performed the surgery, Ms. Custodio was diagnosed with a perforated bowel which, apparently, was sustained during the operation. As a result, Ms. Custodio developed severe adverse complications and experienced multi-systems failures. She was admitted to the critical care unit of Guam Memorial Hospital and underwent additional surgical and medical procedures in response to her condition.

[4] By mid-March of 1994, Ms. Custodio's condition improved and, as a result, she was transferred from the critical care unit to the regular surgical ward. However, on March 27, 1994, she started experiencing seizures. Dr. Kwan-Ming Chen, a neurologist, was then called in for consultation. Dr. Chen diagnosed and treated Ms. Custodio for status epilepticus, a condition of prolonged unresponsiveness with intermittent seizure activity, which, in this case, lasted from

[1] Justice Janet Healy Weeks declines to sign the opinion of the court. Subsequent to deliberation and decision of the panel in this matter, Justice Weeks was referred to Dr. Chen for medical advice and treatment.

11 to 17 hours. Later during her hospital stay, Dr. Chen also advised Ms. Custodio and her sister, Victoria S. Custodio, that the brain damage suffered was permanent. Her brain damage included cortical blindness, visual hallucinations, chronic vertigo, and memory loss. Eventually, Dr. Chen pronounced Ms. Custodio permanently disabled.

[5] Dr. Chen assumed Ms. Custodio's primary neurological care starting on May 16, 1994. However, Dr. Chen was not the sole physician treating Ms. Custodio, nor was his treatment of her continuous. From November 1994 until April-May 1995, Ms. Custodio saw other physicians in Hawaii for her health matters. After her return, Dr. Chen resumed treatment of Ms. Custodio in May 1995 lasting until February 17, 1996.

[6] On November 23, 1994, the Superior Court ordered the appointment of both Victoria Custodio and Estrella Hernandez as Guardians Ad Litem for Teresita Custodio (hereinafter "Appellants"). The petition for guardianship stated "that Teresita S. Custodio suffered severe brain and physical damages to her person . . .Teresita is unable to care for herself in that she has been physically handicapped by loss of vision, memory and motor, to name a few." Excerpt of Record, Pg. 75.

[7] A lawsuit for negligence was filed on February 3, 1995 against defendant Boonprakong, several other physicians, and other non-physician defendants. Almost two years later, on December 2, 1996, a complaint was filed against Dr. Chen for malpractice.[2] Appellants assert that Dr. Chen was not named in the original suit because they were unaware of his conduct. Appellants further maintain that they became aware of Dr. Chen's negligent conduct in February 1996. They met with another neurologist, Dr. Steele, who concluded that Dr. Chen's treatment was below the standard of care in Guam and that his acts caused some or all of the brain damage.

[2]The suits were later consolidated.

[8] Dr. Chen filed a Motion to Dismiss asserting the case was untimely under the statute of limitations. The Superior Court heard the matter on April 8, 1997 and rendered a Decision and Order, on April 30, 1997, granting the motion. An amended Decision and Order was later issued on June 5, 1997 but had no bearing on the court's prior decision.

[9] A Rule 54(b) certification was granted on August 15, 1997; and later, a Final Judgment in Superior Court Case CV1607-96 was entered on August 26, 1997. A notice of appeal was then timely filed.

II.

[10] We first address Appellants' contention that this court is absolutely bound to accept the construction of Guam statutes by courts of another jurisdiction, namely California, from where Guam has modelled many of its statutes. Throughout their brief, Appellants insist that Guam law requires this court to rely upon California case authority.

[11] We reject Appellants' mistaken belief that we are obligated to adopt California precedent. While it is a generally accepted rule of statutory interpretation that a jurisdiction adopting a statute from another accepts the construction placed on it by the original jurisdiction, *see Sumitomo Construction v. Zhong Ye, Inc.*, 1997 Guam 8, ¶ 7 (citing Sutherland's Stat. Const. § 52.01 (5th Ed.)); this court will not blindly adopt another jurisdiction's interpretation on this basis alone. To do otherwise would be a sacrifice of our own reasoned analysis and independent thinking. Accordingly, we will disregard another jurisdiction's construction if it is ill reasoned, based on antiquated grounds, or simply inapplicable to Guam. We will likewise disregard previous authority if it is at odds with local laws as a whole or Guam's applicable customs. *See People v. Quenga*, 1997 Guam 6; *Sumitomo*, 1997 Guam 8.

III.

[12] Pursuant to Guam R. Civ. P. 12(b)(6), if matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as in Rule 56. Addressing motions for summary judgment, Rule 56 states, in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
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> . . .
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> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Guam R. Civ. P. 56 (c) & (e).

[13] This court previously discussed the standards for summary judgments and wrote the following:

> To grant summary judgment, there must not be a "genuine issue." There is a genuine issue, if there is "sufficient evidence" which establishes a factual dispute requiring resolutions by a fact-finder. However, the dispute must be as to a "material fact." A 'material fact' is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. . . . Disputes over irrelevant or unnecessary facts will not prelude a grant of summary judgment.
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> If the movant can demonstrate that there are no genuine issues of material fact, the non-movant cannot merely rely on allegations contained in the complaint, but must produce at least some significant probative evidence tending to support the complaint. In addition, the court must view the evidence and draw inferences in the light most favorable to the nonmovant. The court's ultimate inquiry is to determine whether the specific fact set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence. Put

> simply, the question is whether there is a dispute as to a fact which is relevant to those claims dismissed by the trial court.

Iizuka Corp. v. Kawasho Int'l (Guam) Inc., 1997 Guam 10, ¶¶ 7-8 (citations omitted). With the above standards in mind, we now address the merits of the appeal.

IV.

[14] In order to recover in a medical malpractice action, an individual must initiate suit within one year from the date when the injury is first discovered. *See* 7 GCA § 11308 (1996). However, the date for commencing such action may be tolled under certain limited circumstances. Guam law states that if a person entitled to bring an action is insane at the time the cause of action accrued, then the time of such disability is not counted as part of the time limited for the commencement of the action. 7 GCA § 11404 (1996).[3] Appellants argue that Teresita Custodio is insane for purposes of her malpractice suit and thus the one year filing requirement was tolled. We disagree.

[15] We hold that insanity, for purposes of Guam's tolling statute, turns on the determinative issue of whether a person has demonstrated a severe mental impairment that effects his or her ability to comprehend rights or acts that he would otherwise understand. Absent this ability to comprehend, the time in which to commence a cause of action is tolled until the disability ends. Our interpretation is not only appropriate as to Guam's statute, but our pronouncement also mirrors that of a majority of jurisdictions with similar statutes, including California.

[16] California courts have found an individual "insane" for purposes of the tolling statute when an individual is incapable of caring for his property or transacting business or

[3] 7 GCA § 11404 was originally adopted in 1953 as section 352 of the Guam Code of Civil Procedure which, in turn, was based on California Code of Civil Procedure, section 352).

understanding the nature or effects of his acts. *Pearl v. Pearl*, 177 Cal. 303, 177 P. 845 (1918). Although appearing quite broad, a close review of California decisions utilizing and explaining the *Pearl* definition reveals that its application is dependent on a mental condition affecting the plaintiff's abilities to comprehend. For example, the definition of insanity was more fully described as "a condition of mental derangement as actually to bar the sufferer from comprehending rights which he is otherwise bound to know . . . ." *Gottesman v. Simon*, 169 Cal. App. 2d 494, 498- 499, 337 P.2d 906, 909 (1959)(quoting 54 C. J. S. Limitations of Actions, § 242). The person claiming under the exception must show the condition of mind contemplated by the statute, and not other conditions which would extend the statute's intent. *Id. See also Feeley v. Southern Pac. Trans. Co.*, 234 Cal. App. 3d 949, 285 Cal. Rptr. 666 (1991)(describing insanity as a **mental** condition rendering the plaintiff incapable). Thus, the conditions set forth in *Pearl* are actually individual tests that measure an individual's ability to comprehend the nature of various events surrounding him.

[17] Although the statutory provisions of other jurisdictions are varied in exact definition, they have been uniformly interpreted in a manner that links insanity with a mental condition affecting the ability to comprehend or understand. *See Peach v. Peach*, 218 N.E. 2d 504 (Ill. App. Ct. 1966); *Adkins v. Nabors Alaska Drilling, Inc.*, 609 P.2d 15, 23 (Alaska 1980); *Barnett v. Ashley*, 81 S.E. 2d 11, 13 (Ga. App. 1954); *Valisano v. Chicago & N.W. Ry. Co.*, 225 N.W. 607, 608 (Mich. 1949); *Roberts v. Stith*, 383 P.2d 14 (Okl. 1963).

[18] Ms. Custodio is not insane for purposes of section 11404. The Appellants have not presented evidence showing a demonstrable mental condition affecting her ability to understand and comprehend. In fact, the record before the court shows the opposite. The report of Dr. Taniguchi, a neurosurgeon consulted by the Appellants to reexamine Ms. Custodio and review

her medical records, observes she was "alert, pleasant, and in no distress" during his examination of her. Excerpt Record, Pg. 39. Dr. Taniguchi's declaration further indicates that when he informed Ms. Custodio and her sisters as to the causes of her condition and symptoms, and their permanence, Ms. Custodio was alert and well aware of what was going on around her and what he was telling her. Excerpt of Record, Pg. 35. Another physician consulted on this matter, Dr. Kritchevsky, observed Teresita in a similar state - awake and alert, but quiet. Excerpt of Record, Pg. 50. Dr. Evelyn Tecoma, after performing her neurological consultation, indicated that Ms. Custodio's "[c]omprehension appeared within normal limits" although her language was not expressive. Excerpt of Record, Pg. 46. Finally, even her primary care physician, Dr. Benjamin Sison, indicates he informed Ms. Custodio and her sister of the permanence of her condition and, notably, they both understood what was being told to them. Excerpt of Record, Pgs. 119-120. Accordingly, we reject the claim of insanity. Ms. Custodio has not shown a mental condition impairing her ability to comprehend or understand the nature of her acts or rights.

V.

[19] Notwithstanding our finding that Ms. Custodio is not insane, we must determine the effect, if any, of the lower court order appointing the guardians ad litem. Appellants argue that their appointment as guardians ad litem for Teresita Custodio is conclusive of her insanity and, in and of itself, sufficiently tolls the statute of limitations.

[20] Guam law requires that a party to an action who is either: 1) an infant, 2) insane or 3) incompetent, be represented by a guardian or guardian ad litem. 7 GCA § 12104 (1993). By listing those persons for whom a guardian should be appointed, our legislature clearly

differentiated between the terms "insane" and "incompetent" and provided Guam courts with options upon which an appointment may be based. *See Wade v. Busby*, 66 Cal. App. 2d 700, 702-703, 152 P.2d 754, 755 (Cal. Dist. Ct. App. 1944) (describing the terms insane and incompetent as not necessarily convertible because a person may be incompetent by reason of insanity or from some other cause). *See generally People of Territory of Guam v. Guiang*, Crim Case No.84-00076A, 1986 WL 68514 (D. Guam App. Div. February 20, 1986)(explaining that the words of a statute must be given effect). In order to give effect to the legislature's distinction, we must examine the petition requesting the guardianship. *See Gottesman*, 169 Cal. App. 2d at 500, 337 P.2d at 910 (commenting that only after an adjudication of mental incapacity would further evidence of such not be required).

[21] A review of the petition and order appointing the Custodio sisters as guardians ad litem supports an appointment based on incompetency, not insanity. The language of the petition indicates that Teresita is "physically handicapped by loss of vision, memory, and motor, to name a few." Excerpt of Record, Pg. 75 (emphasis added). This language is a clear indication of incompetency due to her physical disabilities and not, as Appellants characterize, an adjudication of insanity. More importantly, nothing in the petition or order supports the proposition that the Superior Court purported to adjudicate the sanity of Teresita Custodio. Those assertions that would evidence a mental condition amounting to insanity are noticeably absent.

[22] Even if this court were to read the petition in a manner supporting the appointment of the guardians ad litem based on an adjudication of insanity, we do not agree such an appointment should toll the statute of limitations until the disability in question is lifted. Instead, we hold that the statute of limitations will begin to run upon the appointment of either a guardian or a guardian ad litem. In so deciding, we recognize the general rule appears to be that the appointment of a

guardian for a mentally insane person will not cause the time period to initiate a suit to run. *See* Annotation - Limitations, 86 A. L. R. 2d 965 §§ 2-3 (1962). However, for the reasons that follow, we are not persuaded this rule should be adopted on Guam.

[23] Appellants argue that California precedent binds this court's interpretation of Guam statute and, consequently, we must adopt the holdings of both *Gottesman*, 169 Cal. App. 2d at 501, 337 P.2d at 910-911 and *Tzolov v. Int'l Jet Leasing, Inc.*, 232 Cal. App.3d 117, 283 Cal. Rptr. 314 (1991) that the limitations period will not run upon the appointment of either a guardian or guardian ad litem. Essentially, the state of California decided that a judicial determination of mental incompetency, which results in the appointment of a guardian or a guardian ad litem, is conclusive of the disability. *Gottesman*, 169 Cal. App. 2d at 501, 337 P.2d at 910-911. The appointments have the effect of tolling the statute of limitations and, as a matter of law, will continue to toll the running until such time as the court terminates the guardianship or the relationship is substantially abandoned. *Id.* at 502, 337 P.2d at 910-911. In other words, an appointment will not start the running of the limitations period. Thus, although the guardian or guardian ad litem must protect the party's cause of action, a failure to file within the statutory time does not prejudice the party's right to file after the disability has been removed.

[24] Although we recognize the policy behind California's decisions, there are other compelling interests requiring our consideration. A strong public policy exists that suits are brought within a specific time period in order to avoid prejudice that comes from defending an otherwise stale claim. If this court were to adopt California's interpretations as to this particular issue, it is quite possible that the statute of limitations period will remain open for the lifetime of the plaintiff. *See Tzolov,* 232 Cal. App.3d at 120, 283 Cal. Rptr. at 316-317 (identifying contravening policy factors). In addition, the California rule is also open to mischief as a party

may take advantage of the situation by failing to obtain a timely termination of the guardianship.

[25] After considering both the public policy in bringing timely suits and the problems surrounding the California rule, we believe the more equitable remedy is to start the limitations period running anew upon appointment of a guardian based on a finding of insanity. Thus, a party's cause of action is protected by an individual duty bound to do so and, simultaneously, effect is given to the policy of originating timely claims.

VI.

[26] Appellants next argue the one year statute of limitations period is subject to the discovery rule. Because Appellants did not actually discover Dr. Chen's alleged negligence until February 1996, they maintain their filing suit ten months later is timely.

[27] Guam statute provides a clear directive that a plaintiff must file a medical malpractice suit within one year from the date that an injury is discovered or, at the outside, three years from the date of treatment.[4] The discovery rule builds upon the statute by delaying the accrual date of a cause of action until the plaintiff is aware of the injury and its negligent cause.[5] *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1109, 751 P.2d 923, 926-927 (1988). Not only will a party be aware

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[4]The statute of limitations applicable to a medical malpractice suit, found at 7 GCA § 11308 (1994), reads as follows:

> An action to recover damages for injuries to the person arising from any medical, surgical, or dental treatment, omission or operation shall be commenced with[in] (sic) one (1) year from the date when the injury is first discovered; provided, that such action shall be commenced within three (3) years from the date of treatment, omission or operation upon which the action is based.

This specific provision was adopted by the Guam legislature via P.L. 13-116:3 on December 24, 1975. The original language permitted the action to occur within four (4) years from the date of treatment, omission, or operation upon which the action is based. However, the legislature adopted the current 3 year language on March 5, 1980 through P.L. 15-107.

[5]As a practical matter, the date of the discovery will generally be the same as the date the injury occurred.

when he has actual knowledge, but he will be deemed to have knowledge when he could have reasonably discovered both the injury and the negligent cause through the exercise of reasonable diligence. In other words, the statute of limitations will begin to run when "the plaintiff suspects or should suspect that [his] injury was caused by wrongdoing, that someone has done something wrong to [him]." *Id.* at 1110, 751 P.2d at 927. "A plaintiff need not be aware of the specific facts necessary to establish the claim . . . . [o]nce the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights." *Id.* at 1111, 751 P.2d at 928. Ignorance of legally significant facts will not toll the statute of limitations. *Gutierrez v. Mofid*, 39 Cal. 3d 892, 898, 705 P.2d 886, 889 (1985). Equally significant, ignorance of the defendant's identity will not delay the period in which a suit must be filed. *Id.* at 899, 705 P.2d at 889. It is enough to start the period running that the injured party "has suffered appreciable harm and knows or suspects that professional blundering is its cause . . . ." *Id.,*705 P.2d at 889. Consequently, if a suspicion exists, the plaintiff cannot sit back and wait for the facts to find him as the burden of finding the facts falls upon his shoulders. *Jolly*, 44 Cal.3d at 1111, 751 P.2d at 928.

[28] We agree with the trial court's assessment of the facts in this case. Under either a plain reading of the statute or pursuant to the discovery rule, the suit fails. The injuries occurred in March 1994 while the lawsuit against Dr. Chen was filed approximately two years and eight months later on December 2, 1996. The one year time limit set forth in section 11308 was not satisfied.

[29] Likewise, applying the facts to the discovery rule cannot save Appellants cause of action. The injuries suffered by Ms. Custodio should have reasonably been discovered by the Appellants soon after her treatment by Dr. Chen on March 27, 1994. Although Ms. Custodio entered Guam

Memorial Hospital in February 1994 for a hysterectomy, she was otherwise healthy. After undergoing the operation, she consequently suffered a number of life threatening medical conditions requiring both additional surgery and medical treatment. Subsequently, Ms. Custodio experienced a condition diagnosed as status epilepticus causing seizures and resulting in brain damage. Upon discharge, Ms. Custodio left the hospital suffering from cortical blindness, visual hallucinations, chronic vertigo, memory loss, and depression. She was also told by Dr. Chen that her condition was permanent.

[30] These facts make it abundantly clear that the Appellants suffered an appreciable harm which they knew or should have reasonably known resulted from a negligent cause. Ms. Custodio entered the hospital for a specific reason but exited with such severe injuries that she was left permanently disabled. Under these circumstances, a reasonable prudent person would have a suspicion of negligent wrongdoing and, accordingly, Appellants are charged with constructive notice of the Ms. Custodio's injuries. Consequently, the statute of limitations against Dr. Chen began to run in April 1994 after his treatment of Ms. Custodio in March of the same year.

[31] Even if the Appellants could get past the above factual circumstances, the statute of limitations would have begun in January of 1995 and, accordingly, expire one year later. At that time, Appellants consulted with another physician for a second opinion. Dr. Taniguchi, a neurological surgeon located in Hawaii, examined Ms. Custodio and reviewed her medical records from Guam. He informed both her and her sister of the causes of her injuries and that the condition was most certainly permanent. Armed with this information, Appellants were placed on notice that a wrong was done to Ms. Custodio and that someone committed that wrong. It is irrelevant whether they knew Dr. Chen was the cause of the injury as the facts before them

should have reasonable lead them to investigate whether his actions were also negligent.

[32] We therefore hold that the application of the discovery rule does not save the instant suit.

VII.

[33] Appellants next urge this court to adopt the California pronouncement that the statute of limitations will not run until the physician-patient relationship ends. *Greninger v. Fischer*, 81 Cal. App. 2d 549, 184 P.2d 694 (1947). Under this doctrine, while the physician-patient relationship continues, the patient will not ordinarily be put on notice of a physician's negligent conduct. *Hundley v. St. Francis Hospital*, 161 Cal. App. 2d 800, 806, 327 P.2d 131, 135 (1958). The rationale behind the rule appears to be that during the relationship, the physician is in a position to urge upon the patient the prognosis that he will recover over time. *Huysman v. Kirsch*, 6 Cal. 2d 302, 309, 57 P.2d 908, 911 (1941). Thus, it would be inconsistent to expect that a patient would bring an action against his physician for malpractice and, at the same time, continue relying upon his skill, judgment and advice. *Id.* at 309, 57 P.2d at 911. This particular relationship, however, will not benefit a patient if the injury is discovered or through the use of reasonable diligence, should have been discovered. *Petrucci v. Heidenreich*, 43 Cal. App. 2d 561, 562, 111 P.2d 421 (1941).

[34] It is only necessary for us to point out our prior discussions regarding Ms. Custodio's injuries. Appellants knew, or by reasonable diligence, should have known that the injuries sustained were caused by negligent acts. Likewise, Ms. Custodio's subsequent examination by Dr. Taniguchi shows that she was not solely reliant upon Dr. Chen's skill, judgment, and treatment. Dr. Taniguchi also advised that Ms. Custodio's injuries were permanent. Thus, Appellants were on notice that she had suffered injuries requiring investigation of all physicians

involved. Consequently, we find no merit in the assertion that the time was tolled by way of the physician-patient relationship.

VIII.

[35] Finally, the Appellants contend that this court must adopt the continuous negligent treatment rule. Under such rule, Dr. Chen's subsequent treatment of Ms. Custodio caused further brain damage and did not cease until February 1996. We decline to address this issue. The facts before the court do not lend themselves to an application of this particular doctrine. The court will not permit Appellants to create a material issue of fact by submitting a subsequent affidavit contravening the earlier deposition testimony of their own expert.

IX.

[36] We hereby affirm the decision of the Superior Court of Guam.

BENJAMIN J.F. CRUZ
Associate Justice

PETER C. SIGUENZA
Chief Justice