



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 92

A210/22

EX TEMPORE OPINION OF LORD ARTHURSON

In the cause

CD AND OTHERS

Pursuers

against

GRAMPIAN NHS BOARD

Defenders

Pursuers: Love KC and Markie; Jones Whyte LLP
Defenders: McConnell KC; NHS Central Legal Office

17 September 2026

Note

[1] In this truly tragic case the defenders have elected to resolve matters extra-judicially with the first, second and fifth pursuers, and thereafter to go to proof to contest the claims of the third, fourth and sixth pursuers (“the extant pursuers”), contending for the engagement of limitation in respect of all three extant pursuers and submitting that the sixth pursuer is in any event an ineligible claimant under the relevant legislation. The sole basis of loss averred upon in respect of each of the extant pursuers is advanced under reference to section 4(3)(b) of the Damages (Scotland) Act 2011. A notional quantum figure has been agreed between the parties

for the sixth pursuer, leaving therefore as the final outstanding area of dispute the quantification of the contested claims of the third and fourth pursuers.

[2] E was born in August 2014 and died in September 2019. E was the beloved daughter of the first and third pursuers, who had separated in somewhat acrimonious circumstances prior to E's death. The third pursuer, E's father, subsequently married the fourth pursuer in August 2020. The sixth pursuer is the elder daughter of the fourth pursuer.

[3] The defenders have in process admitted breach of duty and causation in respect of the death of E. Subject, therefore, to the disputed issues already set out, the defenders have expressly admitted their liability to make reparation to the extant pursuers.

[4] A Summons was timeously served on behalf of *inter alia* the first pursuer, E's mother, and a copy thereof was served by agents on the extant pursuers on 13 September 2022, some 9 days prior to the expiry of the triennium. The extant pursuers, having struggled to, but in due course obtained, legal representation, on 27 October 2022, some 32 days after the expiry of the triennium, intimated a Minute of Sist and Minute of Amendment seeking to sist themselves as additional pursuers in the present action.

[5] The cause of E's death was related to a brain tumour and haemorrhage. The recorded certification terms are as expressed in detail within the joint minute material. The actings and omissions which the defenders now accept are in their turn set out on record, and amount in short to negligent delay in appropriate care and treatment for E.

[6] Two witnesses gave evidence at the proof, namely the third and fourth pursuers. It is unnecessary to rehearse the scope of that evidence in any detail. Perhaps the tone and tenor of their evidence was of greater significance even than its content. Both were quietly impressive in their testimony, which testimony was delivered in thoughtful and inevitably on occasion in a highly emotional manner. The evidence of the fourth pursuer was particularly measured,

warm and also moving. The close family bond spoken to by each witness in respect of E's settled and contented home life with them and with the fourth pursuer's daughters was in the course of the evidence of the fourth pursuer almost a tangible thing. E and her sister came to them for residential contact every second weekend. The sixth pursuer participated in this, maintaining a bedroom at the family home where she resided during these contact periods. The bond between the sixth pursuer and E was substantial.

[7] I found both witnesses to be credible and, subject to the pressures they were under at the material times about which they were questioned by senior counsel, I assessed them to be reliable historians. The third pursuer is dyslexic. The father of the fourth pursuer died shortly after E's hospital admission. E was transferred to a hospice in Kinross for palliative care, where she subsequently died. The fourth pursuer elected to prioritise E at this time. The fourth pursuer had been heavily involved in E's upbringing, supervising, for example, toilet training and mealtimes with considerable love and affection.

[8] Some particular elements of their evidence do bear repetition at this juncture, however. Collectively, it appeared on balance that the first indications regarding concerns about the quality of E's care emerged like a bolt out of the blue when the witnesses received intimation of the Summons in September 2022, and Balfour and Manson, the intimators of the documentation, then explained the position to the fourth pursuer over the telephone. This included an explanation about matters of time bar and in particular the very limited number of days available to the extant pursuers if they wished to join the action. Prior to receipt of the Summons, neither witness was aware at all of the existence of the Significant Adverse Event Review ("SAER") which had been conducted by the defenders in relation to the treatment received by E and the circumstances of her death. The witnesses were, on the evidence, unaware in any sense that the outcome for E was a consequence of her delayed admission to

hospital. Consultations with medical professionals focussed on matters related to prognosis rather than the history of care and admission.

[9] At the hospital in Edinburgh, having received the news of E's deterioration while on holiday in Greece and returned as soon as possible, there was on the part of the witnesses a real sense of exclusion from information sharing, which sharing was primarily and perhaps understandably directed towards the first pursuer, from whom they were estranged. An entry in the medical notes dated 20 August 2019 was put to the third pursuer, which was in the following terms "I have spoken to dad and partner about 2300 (they are in Greece) and updated them on progress explained diagnosis/scan". The third pursuer had no memory of this, and the fourth pursuer expressly stated in her evidence that she had not spoken to any doctors until she came to Edinburgh.

[10] The witnesses had had no contact with the first pursuer after E's funeral until service of the Summons. The second pursuer, the father of the third pursuer, had in turn at no time discussed with the witnesses his own participation in the action. The effective exclusion, intentional or otherwise, of the third and fourth pursuers from the knowledge and sequelae of E's negligent treatment and consequent death was thereby made complete.

[11] The detailed and extensive submissions of parties are helpfully contained within their respective written submissions. These are lodged in process and should be taken as read, for the purposes of this short opinion, and are referred to in this way for their full terms for reasons of convenience and brevity.

[12] The pursuers contend that the fourth pursuer being E's step-mother, and the sixth pursuer being the fourth pursuer's daughter, the sixth pursuer and E can be deemed under the statute to have been sisters. This is an attractive submission, but on reflection I have concluded that a plain reading of section 14 of the 2011 Act requires the claimant "relative"

to establish on the facts that she or he was brought up in the same household as the deceased and that she or he was accepted as a child of the family in which the deceased was a child. This presents a very real chronological problem for the sixth pursuer in the present case, as she was on the facts available to the court surely brought up in an entirely different household, albeit that she maintained visiting rights latterly in the household of the third and fourth pursuers. The sixth pursuer, who is now aged 26, in this way does not fit into the applicable statutory language, which I accept is an unattractive result, particularly in a case of this nature. This reluctant conclusion strikes however at the eligibility of the sixth pursuer under the statutory scheme and accordingly, independent of any decision on limitation, I hold that her claim in this action must fail.

[13] Turning to the substantial question before the court in this action, namely limitation, I have concluded that in the particular circumstances and factual context of this unusual case, in terms of section 18(2)(b) of the Prescription and Limitation (Scotland) Act 1973, the relevant date of awareness of the statutory facts therein referred to, on the part of the third and fourth pursuers, was 13 September 2022, being the date upon which the Summons was intimated to them as connected persons. The triennium accordingly commenced on that date, rather than the date of E's death. Any awareness on their part in respect of delay in admission was at no point elaborated upon by any representative of the defenders, or shared with them by the first and second pursuers. Critically, they had been abroad, rushed home to Aberdeen and travelled to be by E's bedside in Edinburgh, where they were confronted by the sudden reality of her medical extremis, all in an atmosphere of conflict with the estranged first pursuer and, putting matters bluntly, against a backdrop of an effective exclusion of them from the factual background which had led to this critical point in time. They were advised of questions of prognosis only (see the 20 August 2019 medical records entry, referred to above), rather than

the admission and care history. They were at no point in the Aberdeen hospital. They were not treated as participants in the subsequent SAER, and knew nothing of that review procedure at all. Having no reason even to suspect that E's care had been sub-optimal, they in my opinion had no basis for or onus upon them in respect of the making of subsequent enquiry. I treat the contention that the relevant statutory facts were or should have been obvious to them from the outcome as at best overstated, on the facts in this case. Their understanding of any notional delay in admission was at no time attributed by medical professionals or others to any particular event and most certainly not to the concept of negligent non-treatment. Their understanding was to the effect that E had a fatal brain tumour, and that an inability to treat the tumour successfully and E's subsequent death were all components of the progression of that terminal pathology. On the evidence I conclude that the third and fourth pursuers had no actual or constructive awareness of the relevant section 18 statutory facts until 13 September 2022, when they first became aware that anything had gone amiss with E's treatment and that her death was potentially attributable to any act or omission of the defenders. The time bar period on that date being triggered, it falls that the amendment and sist procedure was in my opinion timeous in respect of them.

[14] The position is somewhat different for the sixth pursuer, whose claim I have already held to be ineligible. She did not give evidence. Her statement material does not address the issue of limitation. She has in my view accordingly failed to discharge the onus upon her to place herself within the statutory scheme under the 1973 Act. The extant pursuers contend that they should be treated as a family block, as it were. I disagree. Her claim is therefore in my view barred by limitation of time.

[15] In the event that I am wrong in my view regarding the position of the third and fourth pursuers, however, I now require to express my thoughts on the engagement of section 19A

of the 1973 Act. At this stage it is significant to record that parties are in agreement that there was a failure by the instructed solicitor to sist the pursuers to the action prior to 25 September 2022. That is one factor in the balancing exercise before the court under this provision.

Another that favours the defenders is of course the loss to them of their limitation defence. It is impossible, however, to ignore the fact that the principal action was timeously raised and investigated by the defenders, to the point whereby they have admitted liability and settled three claims out of the six ultimately proffered. The putative delay was a matter of weeks. To uphold the defenders' position on section 19A would be to confer upon them in terms a windfall benefit. In the exercise of my discretion I therefore hold that the balance of equities favours the application of section 19A in the whole circumstances, in the event of course that I have erred in my conclusions on section 18.

[16] Turning finally to the assessment of quantum in respect of the surviving claims of the third and fourth pursuers, I am grateful to senior counsel for their review of the authorities, in writing and by way of oral submission, and observe at the outset that the death of a very young child in such circumstances as this must require an uplift in the figure set by me in *Paterson v Lanarkshire Heath Board* 2023 SLT 67 as a barometer of such paternal and maternal bereavements. Taking a broad but I trust a fact-sensitive approach, I assess quantum for the third pursuer in the sum of £150,000, inclusive of interest to date, and for the fourth pursuer, noting in passing the case of *McArthur v Timberbush* 2021 SLT 1021, I assess quantum in the sum of £75,000, again inclusive of interest to date. I accordingly pronounce decree in these terms.

[17] Expenses require, of course, to follow success, except insofar as already dealt with in process to date.