

**Graff v. Children’s Care Hospital and School**

Benjamin Graff (Ben) was born with impaired cognitive abilities and has required professional assistance throughout his life. He started receiving services through Children’s Care Hospital and School (CCHS) in 1995. In 2010, on the recommendation of his individualized education program team, he enrolled in a residential treatment program at CCHS. While he was in CCHS’s residential care, the staff at CCHS used physical restraints on Ben, including prone (face-down) restraints. After approximately six months, Ben withdrew from the residential program and, through his parents who are his guardians, he sued CCHS, alleging damages caused by CCHS’s use of physical restraints.

CCHS moved for summary judgment, asserting Ben’s claims were untimely under the statute of repose for medical malpractice claims. The circuit court determined Ben’s claims of negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress were not grounded in medical malpractice, and it permitted the lawsuit to continue.

Before the trial on Ben’s claims, CCHS asked the circuit court to exclude from evidence any prior Department of Health surveys conducted on CCHS before Ben was a resident. These surveys noted any possible deficiencies that may have been discovered after on-site inspections of the facility. The circuit court concluded the surveys were of “limited relevance” and prohibited Ben from introducing them into evidence at the trial. Part of the court’s reasoning for excluding the surveys was based upon its view that the surveys did not provide the proper standard of care regarding physical restraints. At first, the circuit court ruled that certain statutes relating to corporal punishment provided the proper standard of care. However, the circuit court ultimately instructed the jury that various statutes pertaining to developmentally disabled individuals applied.

Following a three-week jury trial, the jury returned a verdict in favor of CCHS on all of Ben’s claims. As the prevailing party, CCHS applied for taxation of costs and disbursements. The circuit court awarded CCHS partial costs and disbursements against Ben’s parents and guardians, Neil and Debra Graff.

Ben appeals, raising two issues that we restate as follows:

1. Whether the circuit court abused its discretion, or otherwise erred, when it excluded the Department of Health surveys from evidence.
2. Whether the circuit court abused its discretion by taxing partial costs and disbursements against Ben’s parents.

By way of notice of review, a procedure by which the prevailing party in the proceedings below may appeal certain issues to this Court, CCHS raises three issues that we restate as follows:

1. Whether the circuit court erred when it denied CCHS's motion for summary judgment based on the statute of repose.
2. Whether the circuit court abused its discretion when it instructed the jury that various statutes pertaining to developmentally disabled individuals applied to Ben's claims.
3. Whether the circuit court abused its discretion by awarding a partial amount, rather than the full amount, of costs and disbursements against Ben's parents.

Mr. Michael L. Luce and Mr. Vincent A. Purtell, Attorneys for Appellants Neil H. Graff and Debra A. Graff, as Parents and Guardians of Benjamin B. Graff.

Mr. Edwin E. Evans, Mr. Mark W. Haigh, and Mr. Tyler W. Haigh, Attorneys for Appellee Children's Care Hospital and School.