



## Alerts

### Case Management Orders Must be Flexibly Applied in Cases Involving Minors

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Health Care Alert

*This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition*

#### Issue

Was a plaintiff's expert properly prevented from testifying about the allegedly improper care of plaintiff's son?

*Lin Jun Huang, as Mother and Next Friend of Adrian Zhaung, a minor v. Elmhurst Clinic, LLC, Elmhurst Hospital, et al., 2020 IL App (1st) 192037*

#### Case Summary

Plaintiff had only disclosed one expert to testify that defendant doctors violated the standard of care causing her minor son's eye injury. The trial court blocked that expert from testifying after a deteriorating relationship between plaintiff and her former trial counsel caused the expert to miss the deadline for his deposition. The appellate court stated that under these circumstances an "appropriate order" would have been to delay the parties' trial date, order the expert to be deposed, and levy a monetary sanction on plaintiff to compensate the defendants' for costs of court intervention. According to the appellate court, this approach would have "avoided prejudice to the minor and secured for the defendants the deposition to which they were entitled." Barring the testimony of the expert as a sanction failed to protect the minor child's rights and was an abuse of discretion. The appellate court stressed that minor litigants are entitled to "special protection" by the trial court to carry out substantial justice, especially to ensure that a minor's rights are protected even from the actions of his representative.

Nevertheless, the appellate court upheld the trial court's ruling on defendants' motions for summary judgment on the basis of the complaint being untimely filed pursuant to 735 ILCS 5/13-213(b) (West 2014). The suit was brought on March 28, 2016. The last time the three physicians treated the minor plaintiff was in 2006. Adrian was diagnosed in 2007 and his mother argued that he had been under continuous care from the time he was born in 2003 through March 2007. In affirming the trial court's summary judgment ruling, the appellate court noted that there was no genuine issue of fact that none of these physicians treated the minor plaintiff in the eight years before the filing of plaintiff's original complaint.

#### Takeaway

Case Management Orders cannot be inflexibly applied in cases where minor plaintiffs would be prejudiced by the actions of their overseers.

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