RENDERED: APRIL 29, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-001679-MR

EDNA FAYE MILLER — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 03-CI-00444

JULIE HOPE BAKER — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

KNOPF, JUDGE: In May 2002, Julie Baker, an attorney, filed suit in Jefferson Circuit Court on behalf of Edna Miller against Norton Hospitals, Inc. The complaint alleged that Miller suffered injuries as a result of negligent treatment in separate incidents in the hospital's wound center and in its emergency room. As of July 2004, Miller's complaint against Norton was still pending. In July 2003, Miller sued Baker. She alleged that Baker had negligently failed to join two physicians to the

medical negligence claim with the result that any recovery from the physicians had become barred by the statute of limitations. By orders entered June 15 and July 2, 2004, the Jefferson Circuit Court dismissed as premature Miller's claim against Baker. That claim would not accrue, the court ruled, until the underlying medical negligence action became final. It is from those orders that Miller has appealed. We affirm.

A professional negligence claim does not accrue until there has been a negligent act and until reasonably definite and non-speculative damages have been incurred.[1] Attempting to fashion a bright-line rule, our Supreme Court has held that when the claim is that an attorney has been negligent in the course of formal litigation, the injury does not become definite and non-speculative until the underlying litigation is final.[2]

Miller acknowledges this rule, but contends that it should not apply in her case because the hospital is apt not to be liable for the physicians' negligence and thus any recovery against the hospital is apt not to compensate her for the full extent of her losses. We are convinced, however, that this is precisely the sort of speculation our Supreme Court has sought to exclude from attorney negligence cases. Even if it were

[1] Faris v. Stone, 103 S.W.3d 1 (Ky. 2003).

[2] Michels v. Sklavos, 869 S.W.2d 728 (Ky. 1994); Hibbard v. Taylor, 837 S.W.2d 500 (Ky. 1992).

certain that Miller was entitled to recover against the physicians, the amount of that recovery, and hence the extent of Baker's potential liability, could not be determined until the underlying litigation concluded. We agree with the trial court, therefore, that this case is not an exception to the rule our Supreme Court has crafted. Accordingly, we affirm the June 15 and July 2, 2004, orders of the Oldham Circuit Court.

ALL CONCUR.

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