

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-000483-MR

CHARLES R. SOWDER, M.D.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 05-CI-00787

TINA GLOVER AND UTICA  
NATIONAL INSURANCE GROUP

APPELLEES

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: KELLER, MOORE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Charles R. Sowder, M.D. appeals from an order of the Franklin Circuit Court denying his motion for summary judgment in a medical malpractice action based on Tina Glover's alleged violation of the applicable statute of limitations. Because this appeal is interlocutory in nature, we do not have jurisdiction to hear the matter and must dismiss.

On June 7, 2004, Tina Glover sustained a work-related injury to her left ring finger and was taken to the emergency room at Franklin Hospital, Inc., d/b/a Frankfort Regional Medical Center (Medical Center). One year later, on June 7, 2005, Glover filed a medical malpractice action against the Medical Center, Southeastern Emergency Physicians, Inc. (SEP), and Dr. Timothy Carroll, alleging that the defendants carelessly and negligently treated her injury. In his answer, Dr. Carroll denied providing care and treatment to Glover at the Medical Center.

When the complaint was filed, Glover alleges that she believed that Dr. Carroll had treated her in the emergency room because his name appeared on hospital records as the attending physician. However, during Glover's deposition on September 13, 2005, counsel for Dr. Carroll and SEP stated that Dr. Charles Sowder, not Dr. Carroll, had treated Glover in the emergency room. Subsequently, after the Medical Center was dismissed from the action and Dr. Sowder filed an affidavit stating that he was the attending physician, Glover filed an amended complaint naming Dr. Sowder as a defendant on August 31, 2007. Following the amended complaint, all parties except Dr. Sowder were dismissed from the action based on various defenses.

On November 16, 2007, Dr. Sowder filed a motion for summary judgment, alleging that Glover's action was time-barred pursuant to Kentucky Revised Statutes (KRS) 413.140. In response, Glover stated that she relied on the hospital's records that Dr. Carroll was her emergency room physician. She argued that she discovered that Dr. Sowder treated her only after receiving Dr. Sowder's

affidavit in August 2007. Thus, due to the hospital's inaccurate recordkeeping, she contended that the statute of limitations was tolled until her discovery of Dr. Sowder. Finding that Glover reasonably relied on the Medical Center's records, the trial court denied Dr. Sowder's motion for summary judgment. This appeal followed.

While neither party has raised the issue, the denial of a motion for summary judgment is generally not appealable because of its interlocutory nature. *First Com. Bank of Prestonsburg v. West*, 55 S.W.3d 829, 830 (Ky.App. 2000). However, there is an exception to this rule where “(1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom.” *Id.* quoting *Transportation Cabinet, Bureau of Highways, Commonwealth of Kentucky v. Leneave*, 751 S.W.2d 36, 37 (Ky.App. 1988).

Under the facts of this case, the exception to the general rule does not apply because this appeal is not from a final judgment. Although the summary judgment included the finality language of CR<sup>1</sup> 54.02, this inclusion cannot change the interlocutory nature of the judgment because no claim or right of any party was conclusively decided by the trial court's decision, which is a requirement of a final judgment. *Roman Catholic Bishop of Louisville v. Burden*, 168 S.W.3d 414, 419 (Ky.App. 2004).

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<sup>1</sup> Kentucky Rules of Civil Procedure (CR).

For the foregoing reason, the above-styled appeal is ORDERED  
DISMISSED.

**ORDER**

This appeal is hereby dismissed as it is interlocutory in nature.

ALL CONCUR.

ENTERED: April 3, 2009

/s/ Kelly Thompson  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

William P. Swain  
Susan D. Phillips  
Sara Clark Davis  
Louisville, Kentucky

BRIEF FOR APPELLEE TINA  
GLOVER:

David Stuart  
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NO BRIEF FILED ON BEHALF OF  
APPELLEE UTICA NATIONAL  
INSURANCE GROUP