ARKANSAS COURT OF APPEALS

DIVISION II

No. CA 07-955

	Opinion Delivered MAY 7, 2008
FLORINE MCDONALD and BABBYE DAVIS, as the co-personal representatives of the Estate of MIRIAM DAVIS, Deceased APPELLANTS	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT, [NO. CV 2003-33-2-1]
V.	HONORABLE BERLIN C. JONES, JUDGE
RANDEL WAYNE BROWN, M.D., et al. APPELLEES	REVERSED AND REMANDED; MOTION TO REMAND MOOT

JOHN B. ROBBINS, Judge

This is a medical-malpractice and wrongful-death case. Appellants Florine McDonald and Babbye Davis, as co-personal representatives of the Estate of Miriam Davis, deceased, appeal from an order of the Jefferson County Circuit Court granting the motions of appellees Randel Brown, M.D. (Brown), and Jefferson Hospital Association, Inc., d/b/a Jefferson Regional Medical Center (JRMC), to dismiss their complaint on the basis of lack of jurisdiction. We reverse and remand.

The deceased was injured in an automobile accident on January 31, 2002, and was taken to the emergency room at JRMC, where Brown was the treating physician. She died that same day.

On January 17, 2003, McDonald, acting as the personal representative of the deceased's estate, filed a complaint against Brown, JRMC, and several John Doe defendants, asserting

a claim for medical negligence. McDonald was appointed personal representative of the decedent's estate by order filed on January 24, 2003. No letters of administration were issued. On February 19, 2003, McDonald filed an amended complaint incorporating by reference the allegations contained in the original complaint.

McDonald and Babbye Davis were appointed as co-personal representatives by order entered on September 9, 2003. Letters of administration were issued on September 11, 2003. After the issuance of the letters of administration, the personal representatives filed other amended complaints against Brown and JRMC.

Thereafter, Brown and JRMC each filed motions to dismiss, asserting that the original complaint was a nullity because it was filed prior to McDonald's appointment as personal representative and that the amended complaint filed after McDonald's appointment was a nullity because no letters of administration were issued. The circuit court agreed and dismissed the complaint. After several motions seeking reconsideration, findings of fact, and other relief, and an appeal to this court that was dismissed for lack of a final order, the circuit court entered a final order. This appeal followed.

The 2007 General Assembly enacted Act 438, which amended the statutory provisions pertaining to the issuance of letters of administration. The amendment provides that the order appointing the administrator empowers the administrator to act and that letters of administration "are not necessary to empower the person appointed to act for the estate." Ark. Code Ann. § 28-48-102(d) (Supp. 2007).

Our supreme court held in *Steward v. Statler*, 371 Ark. 351, ___S.W.3d ___ (2007), that Act 438 was procedural and was intended to be applied retroactively. *See also Banks v. Wilkin*, 101 Ark. App. 156, ___ S.W.3d ___ (Jan. 23, 2008).

Although McDonald filed her original complaint in the present case prior to entry of the order appointing her personal representative of Ms. Davis's estate, she filed an amended complaint on February 19, 2003, after her appointment. In light of Act 438 of 2007 and the supreme court's decision in *Steward*, the circuit court erred as a matter of law in dismissing the complaint. Therefore, we reverse and remand this matter to the circuit court for reinstatement of the complaint.[1]

Reversed and remanded.

PITTMAN, C.J., and MARSHALL, J., agree.

[1]Brown and JRMC conceded in their brief that this case should be reversed and remanded in light of the supreme court's opinion in *Steward*, *supra*. On April 4, 2008, the personal representatives filed a motion to remand in light of *Steward* and Brown's and JRMC's concession. The motion stated that Brown and JRMC had no objection to the relief sought by the personal representatives. Because of our decision herein, the appellants' motion to remand is moot.