

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**TODD COCKRILL, Special Administrator of
the Estate of BETTY J. WHATLEY, Deceased**

PLAINTIFF

v.

4:10CV00524-BRW

**BAPTIST HEALTH MEDICAL CENTERS;
ET AL.**

DEFENDANTS

ORDER

Pending is Separate Defendant Dr. Patricia Vickers' Motion for Summary Judgment (Doc. No. 39). Plaintiff has responded.¹ Defendant's Motion for Summary Judgment is DENIED, because it appears to be premature at this point.

Defendant's Motion for Summary Judgment asserts that Plaintiff has not identified an expert witness to provide testimony in support of his claim. Plaintiff argues that the Motion for Summary Judgment is premature, because discovery is ongoing, with several depositions scheduled for April. The deadline for case-in-chief expert disclosures is July 18, 2011.² So I agree with Plaintiff that the motion is premature.

Arkansas courts have interpreted the state's Medical Malpractice Act³ to require expert testimony that establishes: "(1) the applicable standard of care; (2) that the medical provider failed to act in accordance with that standard; and (3) that such failure was a proximate cause of the plaintiff's injuries."⁴ Summary judgment is proper when a plaintiff has failed to meet the

¹Doc. No. 44.

²Amended Final Scheduling Order, Doc. No. 35.

³Ark. Code Ann. § 16-114-206.

⁴*Hamilton v. Allen*, 267 S.W.3d 627, 631 (Ark. Ct. App. 2007) (citing *Webb v. Bouton*, 85 S.W.3d 885 (Ark. Ct. App. 2002)).

burden of proof on any of these elements.⁵ So it is clear that Plaintiff's case against Dr. Vickers should be dismissed if he cannot provide expert testimony that satisfies the elements of a medical malpractice claim. Because of this I will allow Defendant to renew their motion for summary judgment after the deadline for expert disclosures if it appears that Plaintiff cannot satisfy his burden of proof.⁶

IT IS SO ORDERED this 16th day of March, 2011.

/s/Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

⁵*Id.* at 632.

⁶Dispositive motions are due by September 1, 2011.