

RENDERED: NOVEMBER 1, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-001805-MR

DR. JOHN ZIEGLER AND NEW LEXINGTON CLINIC,  
P.S.C.

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA R. GOODWINE, JUDGE  
ACTION NO. 18-CI-03335

WILLIAM STEVENSON, ADMINISTRATOR OF THE ESTATE  
OF FREIDA STEVENSON AND CABINET FOR HEALTH AND  
FAMILY SERVICES

APPELLEES

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: CLAYTON, CHIEF JUDGE; NICKELL AND L. THOMPSON,  
JUDGES.

THOMPSON, L., JUDGE: Dr. John Ziegler and New Lexington Clinic, P.S.C.

(“Appellants”) appeal from an order of the Fayette Circuit Court denying 1) their  
request to dismiss an administrative complaint filed by William Stevenson,

Administrator of the Estate of Freida Stevenson (“Appellee”), and 2) their motion for sanctions. We conclude that because the Medical Review Panel Act<sup>1</sup> (“MRPA”) was ruled unconstitutional, a motion or appeal arising therefrom is moot. As such, we DISMISS the instant appeal.

### **Facts and Procedural History**

On August 14, 2018, Appellee filed with the Cabinet for Health and Family Services (“the Cabinet”) a proposed complaint under the MRPA.<sup>2</sup> The proposed complaint alleged that Appellants were negligent in the diagnosis and treatment of the lung cancer from which Appellee’s deceased wife, Freida Stevenson, suffered in 2016 and 2017. Appellee acknowledges that the proposed complaint was inadvertently filed without a required signature.

The following month, Appellants filed a pleading with the Fayette Circuit Court styled “Petition and Motion to Invoke the Jurisdiction of the Fayette Circuit Court and for Sanctions.” The petition asked the circuit court to dismiss the action as time-barred because the proposed complaint was not properly filed with a signature during the statutory period. It also sought a sanction based on the missing signature.

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<sup>1</sup> Kentucky Revised Statutes (“KRS”) Chapter 216C.

<sup>2</sup> The MRPA required a party asserting a medical malpractice claim to file with the Cabinet a “proposed complaint” before proceeding in circuit court. KRS Chapter 216C.

On November 15, 2018, the Kentucky Supreme Court rendered *Commonwealth of Kentucky v. Claycomb by and through Claycomb*, 566 S.W.3d 202 (Ky. 2018), *reh'g denied* (Feb. 14, 2019), which found the MRPA to be unconstitutional because it violated an individual's fundamental right to seek judicial redress for injuries. The instant matter proceeded in Fayette Circuit Court, whereupon the court rendered an order on November 19, 2018, denying the requested dismissal and sanction. In support of the order, the court determined that the proposed complaint shall be signed and that the signing could relate back to the filing date of the unsigned proposed complaint. The court ordered that the matter proceed before the Medical Review Panel under the auspices of the MRPA and be removed from the circuit court's active docket. The circuit court's order did not address the holding in *Claycomb*. This appeal followed.

### **Argument and Analysis**

Appellants now argue that the Fayette Circuit Court committed reversible error in failing to hold that the proposed complaint without a signature was improperly filed, and therefore could not toll the applicable statute of limitations under the MRPA. Appellants contend that the statutory language and associated regulations<sup>3</sup> compel strict compliance with the signature requirement, that the signing of the proposed complaint weeks or months later cannot “relate

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<sup>3</sup> 900 Kentucky Administrative Regulations (“KAR”) 11:010.

back” to the filing date, and that an unsigned proposed complaint cannot toll the running of the statute of limitations. Appellants also argue that despite the unconstitutionality of the MRPA - which occurred a few days before entry of the order on appeal - this matter before us is not moot because *Claycomb* did not address when MRPA claimants must refile their actions in circuit court.

Appellants argue that if Appellee refiles the matter in circuit court at some point in the future, Appellee would be subject to a motion to dismiss because it would be time-barred. Appellants contend that if the instant appeal is not resolved, Appellee might argue in a future circuit court action that the tolling of the statute of limitations is subject to collateral estoppel by virtue of the order now on appeal. Thus, Appellants maintain that the issues raised in the instant appeal must be resolved, and that they are entitled to an opinion reversing the order on appeal.

The threshold question for our consideration is whether Appellants may proceed with an appeal grounded on a statutory and regulatory matrix which has been ruled unconstitutional. We must answer this question in the negative. “A case becomes moot when a rendered judgment ‘cannot have any practical legal effect upon a *then* existing controversy.’” *Norton Hospitals, Inc. v. Willett*, 483 S.W.3d 842, 845 (Ky. 2016), *as corrected* (May 10, 2016) (emphasis in original) (footnote and citation omitted). It is not the duty of an appellate court to answer questions which may never arise in the future, nor to grant advisory opinions.

*Commonwealth, Kentucky Board of Nursing v. Sullivan University System, Inc.*, 433 S.W.3d 341, 344 (Ky. 2014) (citation omitted). Further, in order to exercise jurisdiction, there must be “an actual case or controversy.” *Id.* (quoting *Commonwealth v. Hughes*, 873 S.W.2d 828, 829 (Ky. 1994)).

The MRPA was ruled unconstitutional. *Claycomb, supra*. As such, there is no statutory basis for either requiring or allowing the filing of Appellant’s proposed complaint before the Cabinet. Because the proposed complaint is without legal effect, it follows that the issue of the retroactive application of the signature on the proposed complaint is also without legal effect. Simply put, there is no existing controversy. *Norton Hospitals, Inc., supra*. We are not persuaded that the signature issue must now be resolved in order to avoid adverse outcomes or consequences in the future. Such consequences are at most theoretical, as Appellee has not filed an independent circuit court action and has not demonstrated any intent to do so. We are without jurisdiction to address issues which may occur in the future in a civil action which may never be filed. *Kentucky Board of Nursing*, 433 S.W.3d at 344.

### **Conclusion**

The demise of the MRPA rendered moot the issue of whether Appellee’s proposed complaint was properly filed within the statutory period. As

there is no existing controversy requiring adjudication, we hold as moot the claim of error now before us. Accordingly, we DISMISS the instant appeal.

ALL CONCUR.

ENTERED: Nov. 1, 2019



JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANTS:

Andrew DeSimone  
Lexington, Kentucky

BRIEF FOR APPELLEE WILLIAM  
STEVENSON, ADMINISTRATOR  
OF THE ESTATE FOR FREIDA  
STEVENSON:

Gary S. Logsdon  
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NO BRIEF FILED FOR APPELLEE  
CABINET FOR HEALTH AND  
FAMILY SERVICES.