

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: NOVEMBER 1, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2007-SC-000256-MR

DATE 11-26-07 ELLA GEORVH P.C.

UNIVERSITY OF KENTUCKY
MEDICAL CENTER, ET AL.

APPELLANTS

V.

ON APPEAL FROM THE COURT OF APPEALS
CASE NUMBER 2007-CA-000248
FAYETTE CIRCUIT COURT NO. 06-CI-04441

HONORABLE GARY D. PAYNE, ET AL.

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

University of Kentucky Medical Center and University Hospital of the Albert B. Chandler Medical Center, Inc., being two of the 12 defendants named in a medical negligence action filed in October of 2006 in Fayette Circuit Court, appeal from the portion of the April 2007 Court of Appeals order which denied their petition for writ of prohibition. Agreeing with the unanimous appellate panel's application of this Court's decision in Hoskins v. Maricle, 150 S.W.3d 1 (Ky. 2004), we affirm.

Following a hearing on appellants' motion to dismiss in reliance upon the sovereign immunity case of Withers v. University of Kentucky, 939 S.W.2d 340 (Ky. 1997), appellee Fayette Circuit Judge Gary Payne in December of 2006 entered an interlocutory order denying dismissal and permitting plaintiff to take discovery on this issue. Similarly, following a hearing on appellants' subsequent motion to vacate Judge Payne's order, appellee Fayette Circuit Judge James

Ishmael in January of 2007 entered an interlocutory order denying the requested relief and allowing plaintiff 90 days in which to conduct discovery on the issue. Anticipating a prompt opportunity to rule on the merits of the immunity issue, Judge Ishmael expressly declined to include CR 54.02 recitations in the order in this multiple party litigation.

Appellants attempted to appeal to the Court of Appeals as a matter of right and also petitioned for a writ of prohibition from that court, which in a single order in April of 2007 dismissed the appeal for lack of finality and denied prohibition. By separate order, we have denied discretionary review of the dismissal. Similarly, we affirm the appellate panel's application of Hoskins in reasoning that the Fayette Circuit Court rulings were rendered within the jurisdiction of that court over the subject matter of the pending medical negligence action and, further, that appellants failed to show an abuse of trial court discretion irreparably injuring them by permitting a brief period of discovery before deciding the immunity issue. At this early stage of this case, we thus do not reach the question of the propriety of the "collateral order" doctrine. In passing, we also note the passage of over 90 days subsequent to the May 2007 order denying the temporary stay requested by the appellants in this Court.

The denial of prohibition is affirmed.

All sitting. All concur.

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