

PAMMY AUSTIN EZELL as Guardian ad Litem of MICHELLE LYNN MORLAND, and NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF MEDICAL ASSISTANCE, Intervenor v. GRACE HOSPITAL, INC., JOHN F. WHALLEY, M.D., and MOUNTAIN VIEW PEDIATRICS, P.A.

No. 44A06

FILED: 30 JUNE 2006

**Public Assistance-Medicaid lien-recipient's settlement with medical provider-amount of subrogation right**

The decision of the Court of Appeals in this case is reversed for the reason stated in the dissenting opinion that the Division of Medical Assistance (DMA) is subrogated to the entire amount of plaintiff's \$100,000 settlement with a pediatrician for medical malpractice pursuant to its statutory Medicaid lien for payments made on plaintiff's behalf, not just to the amount the DMA paid for medical treatment that corresponded to defendant pediatrician's alleged negligence. Therefore, the DMA is entitled to receive one-third of the \$100,000 settlement as partial payment of its \$86, 540 Medicaid lien. N.C.G.S. § 108A-57(a).

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, \_\_\_ N.C. App. \_\_\_, 623 S.E.2d 79 (2005), vacating an order signed on 22 January 2004 by Judge Robert C. Ervin in Superior Court, Burke County, and remanding for further findings. Heard in the Supreme Court 18 April 2006.

*Elam & Rousseaux, P.A., by Michael J. Rousseaux and William H. Elam, for plaintiff-appellee.*

*Roy Cooper, Attorney General, by Belinda A. Smith, Assistant Attorney General, and Gayl M. Manthei, Special Deputy Attorney General, for plaintiff-intervenor-appellant North Carolina Department of Health and Human Services, Division of Medical Assistance.*

*Christopher R. Nichols, Counsel for the North Carolina Academy of Trial Lawyers, amicus curiae.*

PER CURIAM.

For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed. This case is

remanded to the Court of Appeals for further remand to the trial court for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.