

FILED

10/12/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 22, 2023 Session

**ASHLEY DENSON EX REL. BOBBIE J. DENSON v.
METHODIST MEDICAL CENTER OF OAK RIDGE, ET AL.**

**Appeal from the Circuit Court for Anderson County
No. C1LA0035 Ryan M. Spitzer, Judge**

No. E2023-00027-COA-R9-CV

DISSENTING OPINION

John W. McClarty, J., dissenting.

I agree with the majority's secondary conclusion that Grandmother held standing to file suit on behalf of the minor children. I write separately to address the majority's dispositive holding that failure to identify the minor children in the pre-suit notice defeats this cause of action, thereby precluding their claim for health care liability for judicial review on its merits.

There is no question that the children are the proper claimants here and should have been identified as such. The identification of the children would have also facilitated an easier estimation of the Defendants' financial liability. However, the children lacked the capacity to authorize the notice or assert their right of action as minors. *Busby v. Massey*, 686 S.W.2d 60, 63 (Tenn. 1984). They were fully dependent upon Grandmother and counsel to act for them. Grandmother identified herself and counsel, thereby providing Defendants with enough information to facilitate early resolution of the action through contact with opposing counsel and the children's custodian. Grandmother also identified Decedent and complied with the remainder of the content requirements, permitting Defendants to ascertain their medical liability through a review of Decedent's medical records. Under these limited and unique circumstances, I believe that Grandmother's failure to identify the children did not result in prejudice and that the pre-suit notice provided substantially complied with the content requirements of the notice statutes. Defendants were free to pursue settlement negotiations at any time before and after the proper identification of the minor children. Accordingly, I respectfully dissent.

JOHN W. MCCLARTY, JUDGE