

IN THE SUPREME COURT OF OHIO

Regina Harris, Guardian of the Estate of
Walter Hollins,

Appellee,

v.

Mt. Sinai Medical Center, et al.,

Appellants.

Case No. 06-1247

On Appeal From the Cuyahoga
County Court Of Appeals, Eighth
Appellate District

Court of Appeals Cases No. 85286,
85574, and 85605 (consolidated)

APPELLANTS RONALD JORDAN, M.D. AND NORTHEAST OHIO
NEIGHBORHOOD HEALTH SERVICES, INC.'S RESPONSE TO APPELLEE'S
MOTION FOR SETTLEMENT CONFERENCE

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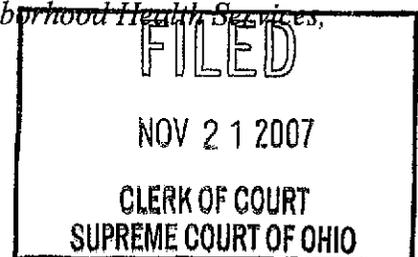
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Appellants Dr. Ronald Jordan and NorthEast Ohio Neighborhood Health Services, Inc. (“Neighborhood Health Services”) do not oppose having settlement discussions with appellee, Regina Harris. This Court’s settlement conference rule, however, plainly contemplates a conference before the Court hears a case. This rule should not be applied where, as here, the Court has already decided the case.

Indeed, because the Court has already decided this medical malpractice case and ordered a new trial, a trial court, rather than an appellate court, dispute resolution process would better serve settlement efforts. The trial court dispute resolution process is better suited to help the parties identify risks they face at trial (as opposed to on appeal) that may affect their settlement positions.

The Court should not invest more resources trying to resolve a case that the Court has already decided. The Court should deny Harris’ motion to refer this case for a settlement conference under this Court’s rules.

I. The Court’s Settlement Conference Rule Contemplates A Pre-Decision Conference.

Harris asks the Court to refer this case for a settlement conference under this Court’s Rule XIV, Section 6. That rule, however, provides that, “[a]t the settlement conference, the parties shall explore settling the case, simplifying the issues, and expediting the procedure, and may consider any other matter that might aid in resolving the case.” These mandatory and permissive topics make plain that the rule is meant at least in part to save the parties the effort of writing briefs, and the Court the effort of studying briefs, conducting a hearing, and writing a decision, in a case the parties can resolve themselves.

The 1999 Staff And Committee Notes to Rule XIV, Section 6(C) confirm this purpose. Those notes explain that “[t]he Supreme Court will schedule [settlement] conferences as early in

the life of the case as possible. The Court expects to resolve a case through settlement, or determine that the case cannot be settled, before briefs are due to limit litigation expenses.”¹

Holding a settlement conference *after* the Court has already decided a case does not serve all the purposes intended by the settlement conference rule.

II. The Trial Court’s Alternative Dispute Resolution Procedures Are Better Suited For Trying To Resolve This Case Before Retrial.

Harris does not even contend that a settlement conference would save this Court any effort. Rather, Harris focuses exclusively on saving the trial court the effort that would be required to retry the case. The trial court, however, is better suited to address those concerns.

Because this Court’s mediation attorneys typically try to settle cases pending with this Court, they likely are most skilled at identifying the risks to parties involved in the appellate process. Those mediation attorneys do not regularly consider the risks that parties face after an appeal has been decided and the case is being remanded for a new trial.

In contrast, the dispute resolution procedures available to the Cuyahoga County Common Pleas Court regularly address the risks that parties will face at trial, such as whether certain evidence will be admissible, whether certain witnesses will be allowed to give expert opinion testimony, the costs of preparing and presenting a multi-week trial, and other, trial-specific considerations.² Neighborhood Health Services has participated in settlement discussions with

¹ The only reported instance we found of this Court ordering a settlement conference after issuing a decision occurred in *DeRolph v. Ohio* (2001), 93 Ohio St.3d 628. That case, however, presented extraordinarily complex questions regarding Ohio’s public school funding practices, which cycled through this Court repeatedly over a ten-year span.

² “It is the policy of the [Cuyahoga County Common Pleas] Court to encourage the use of Alternative Dispute Resolution (‘ADR’) methods.” Cuyahoga Cty. C.P. Loc. R. 21.2. That court’s rules authorize many ADR methods, ranging from a trial judge “[s]uggesting that the parties engage in settlement negotiations and appropriately participat[ing] in such negotiations” to “entering such orders to refer the dispute to any other ADR method as the judge deems to be consistent with the interests of justice.” *Id.* ¶ (A), (D).

Harris in the past and would, of course, do so in the future.³

Accordingly, the Court should issue its mandate remanding this case for retrial. The trial court can then determine what dispute resolution methods are most appropriate.

³ The parties have had a series of settlement discussions. Dr. Jordan and Neighborhood Health Services made a substantial settlement offer while the case was being tried in 2004, even though they believed strongly that Harris' claims lacked merit. These appellants made another substantial offer at the trial court's post-trial settlement conference. While the case was on appeal to the Eighth District Court of Appeals, these appellants participated in private mediation at Harris' request and again made a substantial settlement offer and proposed other, creative ways to try to resolve the case. All of these efforts, however, were frustrated by Harris' repeated (to this day) excessive and unreasonable demands.

III. Conclusion

For these reasons, the Court should deny Harris' motion to refer this case for a settlement conference under this Court's rules.

DATED: November 20, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by ordinary U.S. mail, postage prepaid, upon Jack Beam, Esq., BEAM & RAYMOND ASSOCIATES, 2770 Arapaho Road, Suite 132, PMB 135, Lafayette, Colorado 80026, Andrew S. Muth, Esq., MUTH & SHAPERO, L.C., Society Bank Building, 301 W. Michigan Avenue, Suite 302, Ypsilanti, Michigan 48197, Geoffrey Fieger, Esq., FIEGER FIEGER KENNEY & JOHNSON, 19390 W. Ten Mile Road, Southfield, Michigan 48075, and Sandra J. Rosenthal, Esq., 75 Public Square, Suite 1300, Cleveland, Ohio 44113, attorneys for appellee, and upon Irene C. Keyse-Walker, Esq., TUCKER ELLIS & WEST LLP, 925 Euclid Avenue, Suite 1150, Cleveland, Ohio 44115 and Marc W. Groedel, Esq., and Marilena DiSilvio, Esq., REMINGER & REMINGER CO., L.P.A., 1400 Midland Building, 101 Prospect Avenue, W., Cleveland, Ohio 44115, attorneys for Mt. Sinai Medical Center, on this 20th day of November, 2007.



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