

IN THE SUPREME COURT OF OHIO

07-2202

Loretta Schelling

Plaintiff/Appellee

v.

Community Hospitals
Of Williams County

Defendant/Appellant.

On Appeal From the Williams
County Court of Appeals, Sixth
Appellate District

Court of Appeals
Case No. WM-07-001

**MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT
COMMUNITY HOSPITALS OF WILLIAMS COUNTY**

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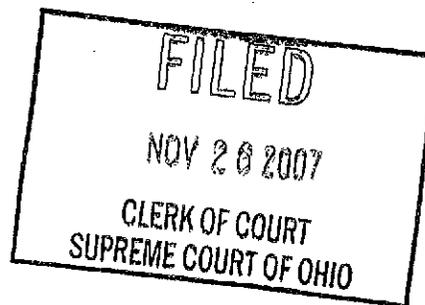


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EXPLANATION OF WHY THIS CASE IS A CASE
OF PUBLIC OR GREAT GENERAL INTEREST

This cause presents a critical issue for the future of negligent credentialing claims against Ohio hospitals and will determine whether a hospital can be subject to suit for the credentialing of physicians who have not been found to have negligently caused injury to a patient. Indeed, this case provides this Court with the opportunity to do what Chief Justice Moyer urged it to do nearly fifteen years ago in *Browning v. Burt* (1993), 66 Ohio St.3d 544: to articulate, precisely and clearly, that a plaintiff must prove the negligence of a physician before she can proceed with a negligent credentialing claim against the hospital where her injury occurred.

In 1990, in *Albain v. Flower Hospital*, 50 Ohio St. 3d 251, this Court clearly established the elements of a negligent credentialing claim. Specifically, the *Albain* Court held that Ohio hospitals have a “direct duty to grant and to continue [staff privileges] only to competent physicians.” It went on to note that “[a] hospital is not an insurer of the skills of private physicians to whom staff privileges have been granted.” Rather,

[i]n order to recover for a breach of this duty, a plaintiff injured by **the negligence of a staff physician** must demonstrate but for the lack of care in the selection or the retention of the physician, the physician would not have been granted staff privileges, and the plaintiff would not have been injured.

Id. at 251-252, paragraph two of the syllabus. (Emphasis added). Despite the clear language of *Albain*, Ohio courts, including the Sixth Appellate District, need this Court’s clear direction and guidance on this issue, in that the *Albain* rule was misinterpreted or simply ignored by the Court of Appeals. Moreover, Ohio hospitals are in need of the protection of this Court against non-ripe, fishing expeditions by claimants, where they would be left to carry the burden and foot the bill for defending against claims of physician-negligence on behalf of non-employees if the Court of Appeals Decision were allowed to stand. Such a result flies in the face of the trend and

intent by the General Assembly to rein in these types of claims as is evidenced by O.R.C. Section 2305.251(B), which now provides a statutory presumption against a claim of negligence credentialing for Ohio hospitals. In short, the issue involved in this appeal is significant and a matter of great importance to every hospital in this State and require consideration and determination by this Court.

In this case, as more fully set forth below, although the Plaintiff/Appellee initially brought a claim of negligence against the subject physician, that claim was dismissed, without prejudice, during the pendency of the case without the physician either admitting or being otherwise adjudicated negligent in his care and treatment of the Appellee. Accordingly, the Appellant moved for and was granted a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim against it upon which relief could be granted. Specifically, Appellant argued that without a finding or stipulation of negligence against the subject physician, the Appellee was unable to establish a vital element to her negligent credentialing claim. Consistent with the *Albain* decision, the trial court agreed. The Court of Appeals reversed and remanded, however, ruling on *Dicks v. U.S. Healthcare*, 1996 WL 263239 concluding that there is no “legal requirement to name the staff physician as a defendant and prove the negligence claim in the same complaint” as the negligent credentialing claim. *Schelling v. Humphrey* (Oct. 12, 2007), 6th Dist. No. WM-07-001. In so holding, the Court of Appeals ignored the fact that in this case, unlike the case to which it cited, there was no finding or admission of negligence against the physician, and, more importantly, ignored the specific language used by this Court in *Albain*, that the injury must have come from negligence of the subject physician. *Albain*, supra at paragraph two of the syllabus. The decision by Court of Appeals below threatens and dilutes Ohio’s well-established negligent credentialing law, and leaves Ohio hospitals vulnerable to claims that are not ripe, and will force

hospitals to accept the burden of and foot the bill for defending against a claim of non-employee physician negligence. Moreover, the decision of the Court of Appeals, if left alone, creates a dangerous precedent, allowing lower courts to misconstrue this Court's prior holding in *Albain*, and to disrupt and/or ignore the legislative trend to insulate Ohio hospitals from premature claims of negligent credentialing. It also places an undue burden on Ohio hospitals to defend against a claim of malpractice against a physician who has no stake in the outcome and no duty to cooperate or even participate in the defense of the case.

STATEMENT OF THE CASE

This action originally involved a claim of medical malpractice against the Appellee's private podiatrist, Stephen Humphrey, M.D., alleging that he negligently performed two surgical procedures on her feet at the Appellant hospital. (See Complaint filed on February 10, 2005). In addition, the Appellee asserted allegations that Community Hospitals of Williams County was negligent in credentialing Dr. Humphrey in that Dr. Humphrey maintained staff privileges at the Community Hospitals of Williams County during the times that he performed surgery on Ms. Schelling. (See Amended Complaint, filed on April 20, 2005). It should be noted that while the holding by the Court of Appeals cites to various non-medical misconduct by Dr. Humphrey, the actual trial court record does not establish those issues. Rather, it was submitted for the first time to the Court of Appeals, attached to the Appellee's brief through unauthenticated police reports and the like. In any event, the Hospital answered the amended Complaint by denying the allegations and subsequently filed a motion to bifurcate and stay the negligent credentialing claim from the underlying negligence claim. Bifurcation was granted by the trial court. (See Order of August 11, 2005). In so holding, the trial court agreed that a finding of negligence against Dr.

Humphrey was a legal prerequisite to the pursuit of a negligent credentialing claim against the Hospital.

While the case was pending, Dr. Humphrey filed for personal bankruptcy and an automatic stay of the proceedings was issued. Prior to the completion of the bankruptcy proceedings, the Appellee apparently negotiated with the bankruptcy trustee, agreeing to reduce the claim she asserted against Dr. Humphrey's estate. Any such agreement was with the bankruptcy trustee, not with Dr. Humphrey directly. (See Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss dated November 29, 2006). There was no evidence presented at the trial court that there were ever any monies actually paid out to the Appellee or that Dr. Humphrey ever acknowledged that he owed any monies to her. Indeed, Dr. Humphrey never admitted that he violated the standard of care in his care and treatment of Mrs. Schelling, nor had he been found or otherwise adjudicated negligent in that care. (See Answer of Stephen Humphrey, M.D., filed on March 28, 2005, wherein he denied that his care and treatment of Ms. Schelling was negligent and/or fell below the standard of care in any way). Despite that, after agreeing to reduce her claim with the bankruptcy trustee, Mrs. Schelling voluntarily dismissed her medical malpractice claim against Dr. Humphrey, retaining her right to refile against him, leaving only the claim for negligent credentialing against the Appellant. (See Plaintiffs' Notice of Dismissal of Defendant, Stephen Humphrey, M.D., filed on October 30, 2006).

Because the claim of medical malpractice against the subject physician had been dismissed, the Appellant moved for a dismissal, for failure to state a claim against it upon which relief could be granted. Specifically, the hospital argued that without a prior finding of negligence against Dr. Humphrey, who was dismissed from the case without admitting or being found negligent, the negligent credentialing claim was not ripe, in that a finding a negligence on

a medical malpractice claim is a legal prerequisite to proceeding on a claim for negligent credentialing. Although the trial court agreed, the Court of Appeals reversed and remanded by order dated October 12, 2007. In doing so, the Court of Appeals provided no guidance to the trial court as to how the issue of physician negligence had to be established from a procedural standpoint. More importantly, the Court of Appeals ignored the specific language used by this Court in *Albain*, and later discussed by Chief Justice Moyer in his dissenting opinion in *Browning*, *supra*, wherein he admonished the majority for “underemphasizing” the *Albain* requirement that physician negligence be established first, fearing that Ohio Courts would do exactly what the Sixth Appellate District did in this case.

STATEMENT OF THE FACTS

According to the medical records, Ms. Schelling first presented with complaints of foot pain to Dr. Humphrey on November 26, 2002. Dr. Humphrey performed two surgeries on Mrs. Schelling, one occurring on January 23, 2003 and the other on February 20, 2003. Both were tarsal tunnel releases performed on the heel, and both were reported as having been completed without complication. Mrs. Schelling continued to have pain in both feet, however, and the records suspected nerve damage resulting in the ongoing pain complaints. Mrs. Schelling alleges that these ongoing problems were complications caused by the two surgeries performed by Dr. Humphrey, which she believes were performed sub-standard. Ms. Schelling also believes that Dr. Humphrey was suffering from a mental health condition at the time of these surgeries which impacted his ability to perform them properly, although there was no evidence of that in the trial court record.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: A plaintiff cannot proceed on a negligent credentialing claim against a hospital in the absence of a prior finding, either by adjudication or stipulation, that the plaintiff's injury was caused by the negligence of the physician who is the subject of the negligent credentialing claim.

It has long been established that in order to recover on a claim for negligent credentialing against an Ohio hospital, "a plaintiff injured by the negligence of a staff physician must demonstrate but for the lack of care in the selection or the retention of the physician, the physician would not have been granted staff privileges, and the plaintiff would not have been injured." *Albain, supra.*, at paragraph two of the syllabus. (Emphasis added). Indeed, there does not appear to be any dispute among Ohio courts that a plaintiff must prove that the subject physician was negligent. There is clearly some confusion, however, as to when that physician negligence must be proven. It is time for the Court to do what Chief Justice Moyer urged it to do in his dissenting opinion in *Browning, supra*, and to emphasize to Ohio Courts that negligence of the subject physician must be established prior to a claimant proceeding with a claim against a hospital for the negligent credentialing of that physician and prior to forcing a hospital to defend itself against such a claim.

Of significance, although the Chief Justice's discussion was contained in a dissent, it did not take issue with a mandate or rule of law by the majority in *Browning*. Rather, it was highlighting a rule of law that had been previously established in *Albain, supra*, which was not addressed by the *Browning* majority either way. Thus, the Court of Appeals below was remiss in dismissing Chief Justice Moyer's concerns as merely a "dissent" where, although contained within a dissenting opinion, the concerns were based on prior Ohio Supreme Court precedence set forth in *Albain, supra*. In other words, the *Browning* majority did not reject the notion that a finding of negligence against a physician is a prerequisite to proceeding with a negligent

credentialing claim as the Sixth Appellate District apparently concluded in this case. Rather, it was silent on the issue altogether. Specifically, in *Browning*, the majority was narrowly focused: “[t]he narrow issue in these consolidated cases is whether the negligent credentialing causes of action against (the Hospital)... were timely filed pursuant to the applicable statute of limitations.” *Browning*, supra at 553. Thus, the majority did not specifically address the issue before the Court in this case. Nevertheless, recognizing the importance of the issue, Chief Justice Moyer in his dissent, which was joined by both Justice Cook and Justice Wright, found it necessary to revisit and discuss the wording in *Albain*. In so doing, he took issue with the majority opinion in *Browning*, not because it was contrary to the notion that a finding of physician negligence is a legal prerequisite to proceeding with a negligent credentialing claim, but rather because the majority did not seem to consider that rule of law in reaching its decision.

Thus, while the Sixth Appellate District in this case correctly noted that the *Browning* “majority did not hold that a finding of negligence is a legal prerequisite to negligent credentialing” (*Schelling v. Humphrey* (Oct. 12, 2007) 6th Dist. No. WM-07-001 at ¶ 18), it did not hold that it was not. Indeed, that was the entire point of Chief Justice Moyer’s dissent. Specifically, he was concerned that the majority decision in *Browning* would create the very confusion and result that was reached by the Court of Appeals below. In that regard, the Chief Justice stated, after quoting the relevant language in *Albain*, that:

The above-emphasized language underscores a crucial point underemphasized by the majority’s opinion: under *Albain*, claims against a hospital for negligent retention or selection of a staff physician are dependent on an underlying medical malpractice claim against the staff physician.

That is, *Albain* requires that the underlying malpractice of the physician be proven before the plaintiff can recover damages

against the hospital for its own negligence. Without an underlying harm to the hospital's patient through medical malpractice, an action against the hospital for negligent credentialing will never arise. Although medical malpractice claims against the doctor and negligent credentialing claims against the hospital are separate causes of action, with separate and distinct duties owed to a singular class of individuals, both causes of action fail without proof that the physician's failure to abide by ordinary standards of care proximately caused the patient's harm.

Browning, supra at 566 (Moyer, C.J., dissenting) (Underlined emphasis added).

It is reasonable to assume that Chief Justice Moyer wanted to emphasize the requirement under *Albain* to avoid the exact decision that the Court of Appeals reached here. By accepting jurisdiction over this appeal, this Court will have the opportunity to do just that and to highlight, clarify and emphasize the very law set forth in *Albain* that was the subject of Chief Justice Moyer's dissent in *Browning*.

It is also worth noting that the position of the Chief Justice was embraced by the Fifth Appellate District in *Davis v. Immediate Medical Services, Inc.*, 1995 WL 809478, (appealed on other issues to this Court in 80 Ohio St. 3d 10). Specifically, the Court of Appeals in *Davis* held that negligent credentialing claims do “not become ripe... until and if medical negligence was found on behalf of (the physician).” *Id.* There, the appellate court disagreed with the appellant's position that the trial court erred in bifurcating the malpractice claim from the negligent credentialing claim, forcing the plaintiff to try the issue of medical negligence first. *Id.* at page 6. In so holding, the *Davis* Court specifically noted that “[a]lthough it may be argued judicial economy dictates a joint trial, the matter *sub judice* did not become ripe as to the issue of negligent credentialing until and if medical negligence was found on behalf of [the subject physician.]” *Id.*

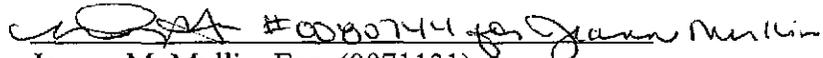
While the Fourth District reached a different conclusion in *Dicks*, supra, an important distinction in that case is the fact that the physician had acknowledged that he violated the standard of care during his deposition and in fact settled the claim of malpractice. *Id.* at page 2. Moreover, that same Court, two years later in *Ratliff v. Morehead* (4th App. Dist.), 1998 Ohio App. LEXIS 2271 backtracked, holding “in order to prove negligent credentialing, the appellants must prove the underlying medical malpractice claim against [the physician]). The fact that there is clearly some confusion among Ohio courts as to intent of the *Albain* decision, and the impact or importance of Chief Justice Moyer’s discussion in *Browning*, warrants this Court’s input and clarification on this issue.

CONCLUSION

While the tort of negligent credentialing may well be a separate and distinct cause of action from medical malpractice by the subject physician, as Chief Justice Moyer and Justices Cook and Wright note in *Browning*, supra, there is certainly an interrelationship between the two, in that “every negligent credentialing claim will by necessity arise out of a malpractice claim.” *Browning* at 572 (Wright’s concurrence and dissent). To hold that a plaintiff does not have to establish the negligence of the physician first would, in effect, force a hospital to first defend against a claim of negligence by a non-employee, non-agent physician in order to effectively defend against a claim for negligent credentialing. That is contrary to this Court’s decision in *Albain* (as is evidenced by Chief Justice Moyer’s discussion of that case in his *Browning* dissent), and contrary to the intent of the General Assembly in creating a statutory presumption against a claim for negligent credentialing, as set forth in O.R.C. Section 2305.251.

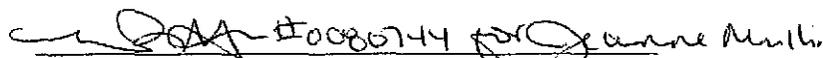
Clearly, this case involves matters of public and great general interest and this Court should accept jurisdiction over this appeal so that the important issues presented can be reviewed on the merits.

Respectfully submitted,

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Certificate of Service

I certify that a copy of this Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to counsel for appellees, Chad Tuschman, Esq., Williams, DeClark, Tuschman Co., L.P.A., 416 N Erie Street, 500 Toledo Legal Building, Toledo, OH 43604-6301, on November 26, 2007.

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FILED
COURT OF APPEALS

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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Loretta Schelling

Court of Appeals No. WM-07-001

Appellant

Trial Court No. 05 CI 000035

v.

Stephen Humphrey, M.D.

Defendant

[Community Hospitals
of Williams County

DECISION AND JUDGMENT ENTRY

Appellee]

Decided:

OCT 12 2007

Chad M. Tuschman and Peter DeClark, for appellant.

Jeanne M. Mullin, for appellee.

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Williams County Court of Common Pleas, which dismissed appellant's case pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted. For the reasons set forth below, this

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court reverses the judgment of the trial court and remands the case for further proceedings.

{¶ 2} Appellant, Loretta Schelling, sets forth the following single assignment of error:

{¶ 3} "The trial court erred as a matter of law in granting appellee's 12(B)(6) motion by holding that plaintiff must first prove negligence against the doctor before being able to bring a negligent credentialing claim against the hospital."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. Appellant's initial complaint was filed on February 10, 2005. The complaint named both Dr. Stephen Humphrey and Community Hospitals of Williams County ("Community Hospitals") as defendants. On April 20, 2005, appellant filed an amended complaint. The amended complaint asserted a negligent credentialing claim solely against Community Hospitals.

{¶ 5} In 2003, Dr. Humphrey performed two podiatric surgeries on appellant at Community Hospitals. Dr. Humphrey was a licensed podiatrist by the state of Ohio. He had full staff privileges by Community Hospitals to perform surgeries such as those underlying this case. On January 23, 2003, Dr. Humphrey performed his first tarsal tunnel release surgery on appellant. The second tarsal tunnel release surgery was conducted on February 20, 2003. Both surgeries were performed on appellant's heels in an attempt to correct persistent foot pain. Appellant claims that Dr. Humphrey was

negligent in performing these surgeries. Appellant further claims that his negligence injured her, and she can no longer work as a result of the injury.

{¶ 6} Appellant's negligent credentialing claim against Community Hospitals stems from a history of criminal conduct by Dr. Humphrey. In 2001, Dr. Humphrey stole an air compressor and several power tools from Community Hospitals. His act of theft was confirmed by hospital security surveillance tapes. After initial denials, he confessed the crime to the investigating Bryan, Ohio police officer.

{¶ 7} After the theft, Dr. Humphrey continued to practice medicine. Unfortunately, he also continued to steal. Dr. Humphrey ultimately confessed to a Bryan Police Officer that he had also stolen several "back-hoes" and a utility trailer from a construction site. On May 3, 2004, Dr. Humphrey pled guilty in the Williams County Court of Common Pleas to seven felony offenses stemming from these thefts. On August 11, 2004, in response to these felony convictions, the state of Ohio suspended Dr. Humphrey's license to practice medicine.

{¶ 8} On August 11, 2005, the trial court granted Dr. Humphrey's motion to bifurcate the negligent credentialing claim against Community Hospitals from the negligence claim. Dr. Humphrey then filed bankruptcy. The trial court issued a stay on November 2, 2005, in response to the bankruptcy case.

{¶ 9} After reaching an agreement with Dr. Humphrey's bankruptcy trustee, appellant moved to dismiss the negligence case against Dr. Humphrey. The claim was dismissed without prejudice. Community Hospitals became the sole defendant.

Community Hospitals then filed a motion to dismiss pursuant to Civ.R. 12(B)(6) on the basis that the negligent credentialing claim could not stand given the dismissal of Dr. Humphrey from the case.

{¶ 10} On December 26, 2006, the trial court granted appellee's 12(B)(6) motion. The court reasoned that because Dr. Humphrey was voluntarily dismissed without a finding of negligence against him, appellant could not proceed with a negligent credentialing claim against the Community Hospitals. As a result of this ruling, appellant filed a timely motion of appeal.

{¶ 11} In her assignment of error, appellant claims that the trial court should not have granted appellee's Civ.R. 12(B)(6) motion to dismiss.

{¶ 12} Civ.R. 12(B)(6) established the basis to dismiss for failure to state a claim upon which relief can be granted. In order to warrant a Civ.R. 12(B)(6) dismissal, "it must appear beyond a reasonable doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief." *City of Cincinnati v. Beretta U.S.A Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, at ¶ 5. The Supreme Court of Ohio has defined the tort of negligent credentialing as when, "a plaintiff injured by the negligence of a staff physician must demonstrate that but for the lack of care in the selection or the retention of the physician, the physician would not have been granted staff privileges, and the plaintiff would not have been injured." *Albain v. Flower Hospital* (1990), 50 Ohio St.3d 251, 211. (overruled on other grounds by *Clark v. Southview Hosp. & Family Center* (1994), 68 Ohio St.3d 435). When ruling on a Civ.R. 12(B)(6) motion, the court must "presume all

factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192.

{¶ 13} In support of its Civ.R. 12(B)(6) motion, Community Hospitals argues that appellant cannot establish the requisite negligence of Dr. Humphrey necessary to the credentialing claim without including him as a party to the action. Appellee argues that without Dr. Humphrey as a party, the element of staff physician negligence cannot be addressed. The relevant issue on appeal is whether appellant can establish a staff physician's negligence, for purposes of a negligent credentialing claim, without the physician named as a party to the action.

{¶ 14} The Fourth District Court of Appeals has directly addressed this precise issue. In *Dicks v. U.S. Health Corp.* (May 10, 1996), 4th Dist. No. 95-CA-2350, the Fourth District Court of Appeals ruled, "Although appellant, in order to collect damages for negligent credentialing, must prove that she suffered injury at the hands of a negligently credentialed doctor, appellant need not join the doctor in the lawsuit against the hospital. Appellant may prove the negligence of the doctor without the doctor being present in the action." *Id.* The court in *Dicks* based its decision on the Ohio Supreme Court's ruling in *Browning v. Burt* (1993), 66 Ohio St.3d 544. When the *Browning* court resolved the negligent credentialing claim in that case, only one of the two allegedly negligent doctors was present in the action. This established a clear precedent that a negligent credentialing claim can be made without the doctor being a named party.

{¶ 15} We note that appellee admits that *Dicks* "held that a physician does not have to be joined in a negligent credentialing cause of action." Appellee attempts to distinguish the case by arguing that the doctor in *Dicks* admitted negligence while testifying. Appellee argues that, in the present case, the agreement reached between appellant and Dr. Humphrey's bankruptcy trustee did not involve a finding of negligence.

{¶ 16} We are not persuaded by appellee's efforts to distinguish and negate the impact of *Dicks*. We note that the Fourth District Court of Appeals in *Dicks* never made a finding on the negligence of the doctor. The only issue in this case is whether the trial court has the ability to find the element of staff physician negligence in a negligent credentialing claim when the negligent staffer is not a named party. We concur with the court in the *Dicks* case and answer in the affirmative.

{¶ 17} In *Browning v. Burt* (1993), 66 Ohio St.3d 544, the Ohio Supreme Court was faced with the issue of whether it should apply the same statute of limitations to a negligent credentialing claim that applies to a medical malpractice claim. The Ohio Supreme Court ruled, "While acts or omissions of a hospital in granting and/or continuing staff privileges to an incompetent physician may ultimately lead to an act of medical malpractice by the incompetent physician, the physician's ultimate act of medical malpractice is factually and legally severable and distinct from the hospital's acts or omissions in negligently credentialing him or her with staff membership or professional privileges." *Id.* at 557 (emphasis removed). The court made clear that medical malpractice and negligent credentialing, while they may be factually intertwined, are

distinct claims. The element of staff physician negligence as a component of a negligent credentialing claim can be proven without the allegedly negligent physician as a named party. *Dicks v. U.S. Health Corp.* (May 10, 1996), 4th Dist. No. 95-CA-2350 (citing *Browning v. Burt* (1993), 66 Ohio St.3d 544).

{¶ 18} Appellee argues that Chief Justice Moyer's concurring opinion clarifies the *Browning* decision. The Chief Justice stated that a "finding or admission of negligence is a legal prerequisite to a negligent credentialing claim." In making this argument, appellee incorrectly classifies this part of the Chief Justice's opinion. The concurring portion of Chief Justice Moyer's opinion addressed the loss of consortium claim in the *Browning* case, but it is actually the dissenting portion of his opinion that addressed the issue of negligent credentialing. This dissent was not adopted by the majority in *Browning*. The majority did not hold that a finding of negligence is a legal prerequisite to negligent credentialing. Determining that staff physician negligence must be proven as an element of a negligent credentialing claim against an employer does not interpose a legal requirement to name the staff physician as a defendant and prove the negligence claim in the same complaint. They are separate causes of action. The trial court erred in imposing such a requirement.

{¶ 19} Wherefore, for the reasons stated herein, we find appellant's assignment of error well-taken. On consideration whereof, the judgment of the Williams County Court of Common Pleas is reversed and remanded to the trial court for further proceedings. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for

the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Williams County.

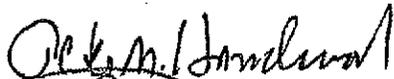
JUDGMENT REVERSED.

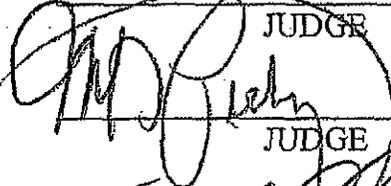
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

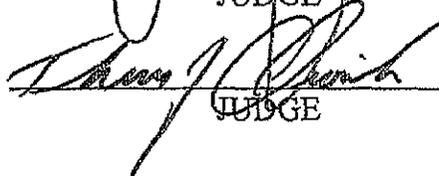
Peter M. Handwork, J.

Mark L. Pietrykowski, P.J.

Thomas J. Osowik, J.
CONCUR.



JUDGE


JUDGE


JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.