

11-1457

RECORD NO.

IN THE OHIO SUPREME COURT

RENE MAYS, Individually and as
Fiduciary of the Estate of Galon Howard,
Deceased, et al.,

Plaintiffs,

-vs-

TOLEDO HOSPITAL, et al.,

and

Mercy St. Anne's Hospital, et al.

Defendants.

Case No. CI0201102848
Court of Appeals No. 11-1145

NOTICE OF APPEAL OF APPELLANT RENE MAYS

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Appellant-Pro-se

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Counsel for Appellee,
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RECEIVED
AUG 24 2011
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
AUG 24 2011
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SUPREME COURT OF OHIO

Appellant Rene Mays hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Court of Appeals case No. 11-1145 on August 18, 2011. Appellant notes that her medical malpractice complaint was dismissed by the trial court on July 27, 2011, without prejudice subsequent to the Court of Appeals July 20, 2011 dismissal. It is respectfully submitted that the trial court July 27, 2011, dismissal transformed the interlocutory judgment of July 20, 2011 into a final appealable order. It is respectfully submitted that the Sixth District Court of appeals decided the issue incorrectly. On the facts of the case at bar, the Court of Appeals should have determined that the July 27, 2011 judgment by the trial court dismissing appellant's medical malpractice complaint without prejudice constituted a final appealable order under R.C. 2505.02. For this reason the matter is of public and great general interests.

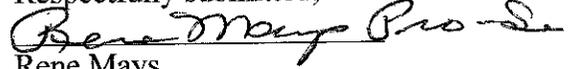
Appellant further notes that her Ohio Civil Rule 62(A) Motion for Stay of the (Appellate) Court's July 20, 2011 Judgment Pending Amended Notice of Appeal that was filed without leave of court and Motion to Vacate Filed in the Trial Court on July 28, 2011 that deprived the appellant's rights under Article 1, Section 16 of the Ohio Constitution, which was properly construed as a timely motion for reconsideration by the Court of Appeals was denied by the Court of Appeals on August 18, 2011 subsequent to the trial court's July 27, 2011 improper dismissal without prejudice. It is respectfully submitted that when the court of appeals denied appellant's motion for reconsideration on ~~August 18, 2011, there were still pending post-judgment motions in the underlying case~~ before the trial court. Therefore, the August 18, 2011 denial was improper, and the appellant has called to the attention of this Court an obvious error in the Court of Appeals

decision or raised an issue for this Court's consideration that was either not considered at all or was not fully considered by it when it should have been. Appellant urges for reconsideration that in fact, the Appellant is of opinion that the Appellate Decision creates confusion. It is respectfully submitted that the Sixth District Court of Appeals decided the issue of reconsideration incorrectly. This matter is of public and great general interests. The Appellate Decision does not uphold the literal language of Appellate Rule 26(A). For this reason the matter is of public and great general interests.

This case raises a substantial constitutional question and is one of public or great general interest.

WHEREFORE, appellant respectfully submits that the Court of Appeals subsequent Decision and Judgment of August 18, 2011 to the trial court's July 27, 2011 Opinion and Judgment Entry and the trial court's July 27, 2011 Opinion and Judgment Entry of July 27, 2011 presented in the August 18, 2011 judgment and the trial court's August 11, 2011 entry on the motion to vacate in Case No. CI0201102848 are unlawful, unjust and unreasonable and should be reversed. The case should be remanded to the trial court with instructions to correct the errors complained of herein. See App. R. 12(B) and R.C. 2505.05

Respectfully submitted,


Rene Mays

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Telephone: (419) 727-3538

Plaintiff-Appellant-pro-se

PROOF OF SERVICE

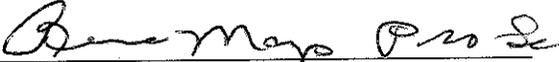
This is to certify that a copy of the foregoing of Rene Mays was sent via ordinary U.S. Mail or via facsimile this 28th day of August, 2011 to:

Kristen A. Connelly, Esq.
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Counsel for Defendant,
Mercy St. Anne's Hospital

Dated: 08/22/2011



Plaintiff's Rene Mays, Pro-se

FILED
COURT OF APPEALS
2011 AUG 18 P 1:11
COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

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

Rene Mays, Individually and as
Fiduciary of the Estate of
Galon Howard, Deceased, et al.

Court of Appeals No. L-11-1145

Trial Court No. CI0201102848

Appellant

v.

Toledo Hospital, et al.

DECISION AND JUDGMENT

Appellees

Decided:

AUG 18 2011

* * * * *

Appellant, Rene Mays, filed a timely pro se application for reconsideration¹ of this court's decision and judgment, journalized on July 20, 2011, in which we dismissed her appeal for lack of a final appealable order.

Additional Miscellaneous Filings

Appellant also filed an amended notice of appeal on July 28, 2011, without leave of court, and an amended motion for reconsideration on August 2, 2011. Because the

¹The court will treat appellant's July 29, 2011 "Ohio Civil Rule 62(A) Motion for Stay of the [Appellate] Court's July 20, 2011 Judgment Pending Amended Notice of Appeal and Motion to Vacate Filed in the Trial Court on July 28, 2011" as a timely motion for reconsideration.

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1. AUG 18 2011

APPELLANT'S
EXHIBIT 1

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amended notice of appeal was filed without leave of court and was filed after this court issued its July 21 dismissal, the July 28 amended notice of appeal is stricken from the record. See App.R. 3(F) and 6th Dist.Loc.App.R. 3(A)(2). Also, App.R. 26 does not provide for the filing of an amended motion for reconsideration. Therefore, the August 1 amended motion for reconsideration is also stricken from the record.

Reconsideration Test

In ruling on a motion to reconsider, this court follows *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, where paragraph two of the syllabus states:

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. (App.R. 26, construed.)"

Appellant notes that her medical malpractice complaint was dismissed by the trial court on July 27, 2011, without prejudice subsequent to this court's July 20, 2011 dismissal. Appellant argues that this transformed the interlocutory judgment into a final appealable order. However, when this court dismissed appellant's appeal on July 20, 2011, the underlying matter was still pending before the trial court. Therefore, the July 20, 2011 dismissal was proper, and appellant has not called to the attention of the court an obvious error in its decision or raised an issue for consideration that was either

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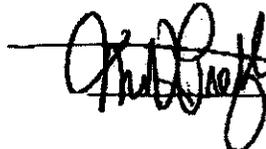
not considered at all or was not fully considered by the court when it should have been.²

All pending motions are denied as moot. The motion to reconsider is denied.

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.

Stephen A. Yarbrough, J.
CONCUR.



JUDGE



JUDGE



JUDGE

²This court makes no finding as to whether the July 27, 2011 judgment by the trial court dismissing appellant's medical malpractice complaint *without prejudice* constitutes a final appealable order under R.C. 2505.02. See, e.g., *Hughley v. Southeastern Correctional Inst.*, 8th Dist. No. 10CA43, 2010-Ohio-5497, ¶ 46-47.

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COURT OF APPEALS
2011 JUL 20 P 1:10
COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rene Mays, Individually and as
Fiduciary of the Estate of
Galon Howard, Deceased, et al.

Court of Appeals No. L-11-1145

Trial Court No. CI0201102848

Appellant.

v.

Toledo Hospital, et al.

DECISION AND JUDGMENT

Appellees

Decided: JUL 20 2011

* * * * *

This case is before the court sua sponte. It has come to the court's attention that plaintiff-appellant, Rene Mays, has filed an appeal from an order that is not final and appealable.

Appellant filed a pro se medical malpractice complaint. Appellant did not attach a Civ.R. 10(D) affidavit of merit to her complaint. In response, defendants-appellees, Toledo Hospital and Mercy St. Anne Hospital, filed a motion to dismiss and a motion for summary judgment. Those motions remain pending before the trial court. On June 15, 2011, appellant filed a pro se notice of appeal from the June 7, 2011 judgment of the

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APPELLANT'S
EXHIBIT 2

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Lucas County Court of Common Pleas, which denied appellant's motion for an extension of time to file an affidavit of merit.

This court only has jurisdiction to hear appeals from final orders. See Section 3(B)(2), Article IV of the Ohio Constitution. "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals * * *."

R.C. 2505.02 defines what a final, appealable order is, and states in pertinent part:

"(A) As used in this section:

"(1) 'Substantial right' means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

"(2) 'Special proceeding' means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

"(3) 'Provisional remedy' means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, * * *.

"(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

"(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

"(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

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* * *

"(4) An order that grants or denies a provisional remedy and to which both of the following apply:

"(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

"(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

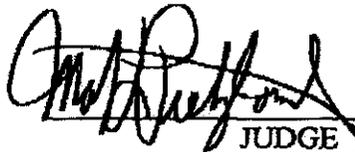
The June 7 judgment denying appellant's motion for an extension of time to file her Civ.R. 10(D) affidavit of merit does not fit into any of the categories of this statute. The court hereby dismisses this appeal. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. All pending motions are moot and denied. It is so ordered.

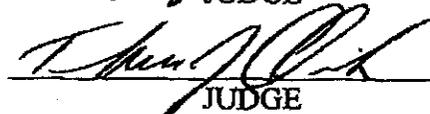
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.

Stephen A. Yarbrough, J.
CONCUR.


JUDGE


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2011 JUN 29 P 12:17

COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rene Mays, Individually and as Fiduciary
of the Estate of Galon Howard, Deceased,
et al.

Court of Appeals No. L-11-1145

Trial Court No. CI0201102848

Appellant

v.

Toledo Hospital, et al.

DECISION AND JUDGMENT

Appellees

Decided: JUN 29 2011

* * * * *

This civil appeal is before the court on appellant's pro se motions for appointment of counsel and to waive costs of appeal. Appellant has also filed a statement of her finances to support these requests.

Since this is a civil matter, there is no right to appointed counsel. Therefore, appellant's motion for appointment of counsel is found not well-taken and denied.

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1. JUN 29 2011

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APPELLANT'S
EXHIBIT 3

Appellant's motion to waive appellate costs is premature. 6th Dist. Loc. App. R. 7 allows an indigent party to proceed with her appeal without paying the *deposit for costs*, it does not relieve her of the responsibility of paying the costs when the case is over.

App. R. 24 states, in pertinent part:

"(A) Except as otherwise provided by law or as the court may order, the party liable for costs is as follows:

"(1) * * *

"(2) If the judgment is affirmed, the appellant."

Thus, if the judgment Mays is appealing is affirmed, this court may assess appellate costs to her. However, since no costs have yet been assessed to Mays, her motion to waive appellate costs altogether is premature and denied.

Thomas J. Osowik, P.J.

Thomas J. Osowik, P.J.
JUDGE (PK)

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