ORIGINAL

RECORD NO. 11-1485

IN THE OHIO SUPREME COURT

RENE MAYS, Individually and as Fiduciary of the Estate of Galon Howard, Deceased, et al.,	:	Case No. CI0201102848 Court of Appeals No. 11-1145
Plaintiffs,	:	
-vs-	:	
TOLEDO HOSPITAL, et al.,	:	
and	:	
Mercy St. Anne's Hospital, et al.	:	
Defendants.	:	

APPELLANT'S NOTICE OF APPEAL FROM THE LUCAS COUNTY COURT OF APPEALS DECISION AND JUDGMENT ISSUED ON JULY 20, 2011

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

Rene Mays
328 E. Central Avenue
Toledo, Ohio 43608
Appellant-Pro-se

FILED
AUG 30 2011
CLERK OF COURT
SUPREME COURT OF OHIO

Appellant Rene Mays hereby gives notice of appeal, pursuant to R.C. 2505.02 R.C. 2505.03, and R.C. 2505.04-05 to the Supreme Court of Ohio, from Decision and Judgment Entry of the Lucas County Court of Appeals, entered on July 20, 2011, in Case No. L-11-1145.

Appellant was and is a party of record in Case No. CI0201102848, and timely filed a motion to vacate the trial court's judgment of July 27, 2011 in accordance with Ohio Civil Rule 60(B). Appellant's motion to vacate was denied, with respect to the issues on appeal herein, by entry entered on August 11, 2011.

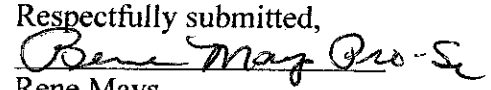
The Appellant complains and alleges that the trial court's judgments on the motion(s) to vacate in Case No. CI0201102848 are unlawful, unjust and unreasonable in the following respects, as set forth in including Appellant's motion to amend the judgment of July 27, 2011, filed on August 10, 2011, in Case No. CI0201102848, which is incorporated herein by reference pursuant to Ohio Civil Rule 10(C). These claimed errors including the entire record in Case No. CI0201102848 are incorporated herein by reference. Id.

Appellant further complains and alleges that the trial court's dismissal of her medical malpractice complaint on July 27, 2011, without prejudice transformed the Court of Appeals decision and judgment, journalized on July 20, 2011, in which it dismissed her appeal for lack of a final appealable order into a final appealable order under R.C. §2505.02.

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

WHEREFORE, appellant respectfully submits that the Court of Appeals decision and judgment, journalized on July 20, 2011, in which it dismissed her appeal for lack of a final appealable order and the trial court's July 27, 2011 Opinion and Judgment Entry of July 27, 2011 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
328 E. Central Avenue
Toledo, OH 43608
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 29th day of August, 2011 to:

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Elizabeth E. Baer, Esq.
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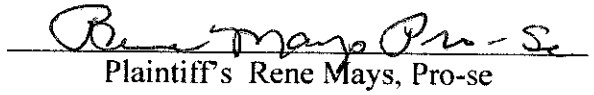
Counsel for Defendant,
Mercy St. Anne's Hospital

Dated: 08/29/2011



Plaintiff's Rene Mays, Pro-se

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2011 JUL 20 P 1:10
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.

Appellant

v.

Toledo Hospital, et al.

Appellees

Court of Appeals No. L-11-1145

Trial Court No. CI0201102848

DECISION AND JUDGMENT

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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EX. "3"

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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. JUDGE

Thomas J. Osowik, P.J. JUDGE

Stephen A. Yarbrough, J. JUDGE
CONCUR.

FILED
LUCAS COUNTY

2011 JUL 27 P 1:26

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Rene Mays, Individually and as Fiduciary of the Estate of Galon Howard, Deceased, et al.,	Case No. CI11-2848
Plaintiffs,	Judge James D. Bates
vs.	
Toledo Hospital, et al.,	**OPINION AND JUDGMENT ENTRY**
Defendants.	

* * * * * * * * * * * * *

This matter is before the court on the motions to dismiss filed by defendants, Toledo Hospital and Mercy St. Anne Hospital (hereinafter "defendants"). Upon a review of the parties' memoranda, the relevant evidence, and the applicable law, the court finds the motions well-taken.

STATEMENT OF FACTS

On April 19, 2011, Rene Mays filed a Complaint For Medical Negligence; Respondeat

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EX. "1"

Superior; Wrongful Death Claims With, [sic] Jury Demand Endorsed Thereon Pursuant To R.C. 2305.113(V) and R.C. 2125.02(D)(1) against "Toledo Hospital, et al." and "Mercy St. Anne's Hospital, et al." Paragraph 9 of the complaint explained that the plaintiff was "Rene Mays the Medical Power of Attorney ("POA") or personal representative of the decedent Galon Howard and for the exclusive benefit of Galon Howard's surviving next of kin, who is his mother Adlean Howard ***."

On May 26, 2011, Toledo Hospital filed its motion to dismiss. Mercy St. Anne Hospital filed its own motion to dismiss on June 1, 2011.

Then, on June 8, 2011, Ms. Mays, individually and as fiduciary of the estate of Galon Howard (hereinafter "decedent"), filed a Rule 15(A) Amended Complaint for Medical Malpractice and Wrongful Death With Jury Demand Endorsed Hereon.

The defendants' motions to dismiss have been fully briefed and are decisional.

LAW AND APPLICABLE DISCUSSION

When ruling on a motion to dismiss, this court must presume all factual allegations in the complaint are true and make all reasonable inferences in favor of the nonmovant. Mitchell v. Lawson Milk Company (1988), 40 Ohio St.3d 190, 192. The motion will only be granted if it appears beyond a doubt that plaintiff can prove no set of facts which would entitle plaintiff to relief. Id.

Both defendants argue that the claims of any plaintiff, other than Rene Mays' personal claims, must be dismissed based upon R.C. 4705.01, which states in relevant part that "[n]o person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any

action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules." This rule prohibits a person who is not an attorney from representing any person other than him or herself. Tubalcain Trust v. Cornerstone Constr., Inc. (May 26, 1994), 10th Dist. No. 93APE12-1701. This includes banning an administrator of an estate from representing the estate when there are beneficiaries other than the administrator. Heath v. Teich, 10th Dist. No. 06AP-1018, 2007-Ohio-2529.

The amended complaint alleges a wrongful death claim and a survival claim based upon defendants' alleged medical negligence. These claims must be brought by the personal representative of the decedent. Peters v. Columbus Steel Castings Co., 115 Ohio St.3d 134, 2007-Ohio-4787; R.C. 2125.02. Although Ms. Mays is the personal representative, and thus is the proper party to bring these claims, she is merely a nominal party, not the real party in interest. In the case of the wrongful death action, Ms. Mays is acting on behalf of the statutory next of kin.[1] Decedent's next of kin include persons other than Ms. Mays. With respect to the survivorship action, Ms. Mays is representing decedent's estate, the beneficiaries of which include persons other than Ms. Mays. Peters, at ¶10. In both counts, Ms. Mays is acting for the benefit of persons other than herself, and therefore she is prohibited from bringing either action pro se. See, e.g., Heath, at ¶11. Further, the amended complaint does not state any claims that Ms. Mays may have individually. Accordingly,

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[1] R.C. 2125.02(A)(1) states "a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent."

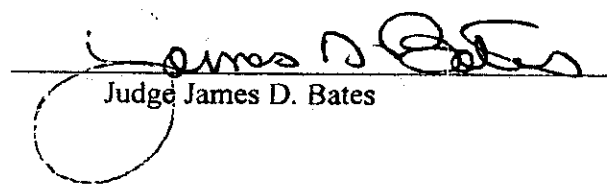
this court finds defendants' motions to dismiss well-taken.[2] Furthermore, the court finds all other motions pending in this case to be moot and therefore denied.

JUDGMENT ENTRY

It is **ORDERED, ADJUDGED, AND DECREED** that the motions to dismiss filed by defendants, Toledo Hospital and Mercy St. Anne Hospital, are hereby **GRANTED.**

It is further **ORDERED, ADJUDGED, AND DECREED** that Ms. Mays' amended complaint is hereby **DISMISSED** without prejudice.

July 26, 2011



Judge James D. Bates

cc: Rene Mays
Elizabeth E. Baer, Esq.
Peter N. Lavalette, Esq.

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[2] In addition to the above, the court notes that Ms. Mays has not provided an affidavit of merit, as mandated by Civ.R. 10(D)(2). This also requires the court to dismiss the complaint. An affidavit of merit will be necessary if Ms. Mays refiles her complaint.

FILED
LUCAS COUNTY

2011 AUG 11 A 9:40

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

RENE MAYS Plaintiff,	*	Case No. G-4801-CI-0201102848-000
vs.	*	
TOLEDO HOSPITAL Defendant.	*	**ORDER**
	*	JUDGE JAMES D. BATES

This matter came on to be heard upon the Motion filed by Plaintiff for the Court to Vacate it's Dismissal Order of July 27, 2011 and Plaintiff's Request for an Order Entrying Judgment in Her Favor and Setting a Trial Date to Assess Damages. The Court finds said motion not well taken.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for the Court to Vacate it's Dismissal Order of July 27, 2011 and Plaintiff's Request for an Order Entrying Judgment in Her Favor and Setting a Trial Date to Assess Damages is found not well taken and DENIED.

August 5, 2011

JUDGE JAMES D. BATES

cc: RENE MAYS
KRISTEN A CONNELLY
PETER LAVELETTE

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EX. "2"

2505.03 Appeal of final order, judgment, or decree.

(A) Every final order, judgment, or decree of a court and, when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction.

(B) Unless, in the case of an administrative-related appeal, Chapter 119. or other sections of the Revised Code apply, such an appeal is governed by this chapter and, to the extent this chapter does not contain a relevant provision, the Rules of Appellate Procedure. When an administrative-related appeal is so governed, if it is necessary in applying the Rules of Appellate Procedure to such an appeal, the administrative officer, agency, board, department, tribunal, commission, or other instrumentality shall be treated as if it were a trial court whose final order, judgment, or decree is the subject of an appeal to a court of appeals or as if it were a clerk of such a trial court.

(C) An appeal of a final order, judgment, or decree of a court shall be governed by the Rules of Appellate Procedure or by the Rules of Practice of the Supreme Court, whichever are applicable, and, to the extent not in conflict with those rules, this chapter.

Effective Date: 03-17-1987