Cite as 2012 Ark. App. 494

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-52

	Opinion Delivered September 19, 2012
MELISSA ANN YOUNG ET AL. APPELLANTS	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. CV-2007-2372-4]
V.	HONORABLE MARY ANN GUNN, JUDGE
BRITTE SMITH, M.D., ET AL. APPELLEES	APPEAL DISMISSED

JOHN MAUZY PITTMAN, Judge

The appellants in this case seek to have the meaning of a statute clarified and to have Arkansas Supreme Court precedent overruled. The supreme court previously considered and rejected a motion to certify this appeal to that court. Because we have determined that the issues are moot, we dismiss the appeal.

This appeal arises out of a medical-malpractice action brought after a premature birth in September 2004 resulted in disabilities to the appellants' infant twins. The appellants, individually and on their children's behalf, filed suit in 2006 against several defendants, including John Does 1–10. The case was voluntarily dismissed without prejudice in October 2006 and then refiled against the same defendants in October 2007. In November 2007, appellants filed an amended complaint.

The key event, from the standpoint of this appeal, was the filing of appellants' second amended complaint in November 2009, in which Washington Regional Medical Center (WRMC) was, for the first time, named as a defendant. WRMC moved for a partial summary judgment to dismiss the appellants' individual claims. After a hearing, the trial court granted the motion, ruling that the appellants' individual claims against WRMC were not filed within the applicable two-year statute of limitations, Ark. Code Ann. § 16-114-203(a) (Repl. 2006). The trial court further ruled that, pursuant to *Stephens v. Petrino*, 350 Ark. 268, 86 S.W.3d 836 (2002), appellants could not avail themselves of Ark. Code Ann. § 16-56-125 (which permits the substitution of a named party for a previously unknown, "John Doe" defendant to relate back to the date of the filing of the original complaint) because WRMC's identity was known to appellants at the time that the original complaint was filed. The claims made on behalf of the children proceeded to a jury trial, which resulted in a verdict for the defendants, including a finding of no negligence on the part of WRMC.

On appeal, appellants challenge only the partial summary judgment in favor of WRMC. They argue that the Arkansas Supreme Court's decision in *Stephens v. Petrino*, *supra*, was erroneous and should be overruled. The parties agree that the doctrines of res judicata and collateral estoppel bar appellants from retrying their case against WRMC because the defense prevailed on the liability issues presented on behalf of the children at the jury trial. Therefore, the parties agree that this appeal is moot. Appellants argue, however, that we should nevertheless hear the case under an exception to the mootness doctrine. We disagree, and we dismiss.

Arkansas appellate courts do not issue advisory opinions or decide questions that will have no effect on the parties. *Arkansas Department of Human Services v. State*, 318 Ark. 294, 885 S.W.2d 14 (1994). Ordinarily, mootness resolves the controversy and renders a decision unnecessary; however, an appellate court has discretion to issue an opinion to settle a moot issue if the outcome of the case involves great public interest, if the issue is capable of repetition but tends to evade review, or if a decision might avert future litigation. *Dillon v. Twin City Bank*, 325 Ark. 309, 924 S.W.2d 802 (1996); *Owens v. Taylor*, 299 Ark. 373, 772 S.W.2d 596 (1989). None of these exceptions are applicable here. The exception for matters of significant public interest should be employed with caution and on rare occasions, and such action should ordinarily be taken only by the highest court in the state rather than by an intermediate appellate court. *See In re L.W.*, 861 N.E.2d 546 (Ohio Ct. App. 2006). That is especially so in the present case, where the asserted issue of public interest is bound up in appellants' argument that the Arkansas Supreme Court erred in *Stevens v. Petrino*. We are asked, in effect, to overrule a longstanding decision of the Arkansas Supreme Court—something that we are without authority to do. *Box v. State*, 348 Ark. 116, 71 S.W.3d 552 (2002).

All of the exceptions to the mootness doctrine are premised on the assumption that the appellate court has the power to grant the requested relief, thereby advancing the public interest, averting future litigation, or resolving an issue that escapes review. We can do none of those things in the present case because we lack the authority to grant the requested relief. Consequently, we decline to decide the case, and we dismiss the appeal.

Appeal dismissed.

GLADWIN and ROBBINS, JJ., agree.

Taylor Law Partners, LLP, by: *Timothy L. Brooks*, for appellant.

Davis, Clark, Butt, Carithers & Taylor, PLC, by: *Constance G. Clark*, *Kelly Carithers*, and *Colin M. Johnson*, for appellee.