

Cite as 2018 Ark. App. 26

ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-17-457

DERAN FORD, AS ADMINISTRATOR
OF THE ESTATE OF HERMAN P.
FORD, DECEASED, AND AS NEXT
FRIEND ON BEHALF OF INDYIA
FORD, A MINOR

APPELLANT

V.

NATASA MILOJKOVIC, M.D., ANGELA
PENNISI, M.D., MATTHEW STELIGA,
M.D., AND KYLE KALKWARF, M.D.

APPELLEES

Opinion Delivered January 24, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SIXTH DIVISION
[NO. 60CV-14-4086]

HONORABLE TIMOTHY DAVIS
FOX, JUDGE

DISMISSED WITH PREJUDICE

BRANDON J. HARRISON, Judge

Deran Ford, as administrator of the estate of Herman P. Ford, and as next friend on behalf of Indyia Ford, a minor, appeals the Pulaski County Circuit Court’s grant of summary judgment in favor of four doctor defendants. We hold that Ford has appealed from a nonfinal order and dismiss the case.

On 26 September 2011, Herman Ford visited the emergency room (ER) at the University of Arkansas for Medical Sciences (UAMS) for treatment of a chronic cough. A chest x-ray revealed a tumor in his chest, and the ER physician recommended that Ford be further evaluated by an oncologist and that a chest CT be performed. Over the next year, Ford was seen by a number of physicians and underwent chemotherapy treatment. In

October 2012, he returned to UAMS and was hospitalized for twelve days due to his poor nutritional status. He was discharged on October 24 but returned to the ER on October 29 suffering from chest palpitations, shortness of breath, pneumonia, and severe dehydration. He later went into cardiac arrest and died on 1 November 2012.

On 24 October 2014, Deran Ford, Herman Ford's brother, filed a complaint in the Pulaski County Circuit Court alleging negligence and malpractice in Herman's diagnosis and care. Ford's complaint named eight doctors, a nurse practitioner, UAMS, the University of Arkansas system (UA), and John Does 1–10. Between March 2015 and May 2016, all named parties (except UA) were either dismissed or granted summary judgment. Deran appealed the summary judgment granted to four doctors: Drs. Kalkwarf, Steliga, Milojkovic, and Pennisi. However, because there was no order dismissing UA from the case, this court dismissed for lack of a final, appealable order. *Ford v. Milojkovic*, 2017 Ark. App. 187. Ford has obtained a purportedly final order from the circuit court, and the appeal is now before us for the second time.

After our opinion and mandate were issued, the circuit court entered a “final order” on 5 May 2017 that stated the following:

This Court finds the causes of action against the following separate defendants, Natasa Milojkovic, M.D., Angela Pennisi, M.D., Matthew Steliga, M.D., David Rutlen, M.D., Hakan Paydak, M.D., Thaddeus Bartter, M.D.,] Teka Bartter, A.P.N., Kyle Klakwarf [sic], M.D.,] and University of Arkansas Medical Sciences (UAMS) are hereby dismissed; therefore, all defendants have been dismissed out and this Final Order closes the case.

Note that UA was still not listed as a dismissed party in this order. That same day, May 5, Ford filed a notice of appeal from the “final order.” Twenty days later, on 25 May 2017, the circuit court entered an amended final order:

This Court finds the causes of action against the following separate defendants, Natasa Milojkovic, M.D., Angela Pennisi, M.D., Matthew Steliga, M.D., David Rutlen, M.D., Hakan Paydak, M.D., Thaddeus Bartter, M.D., Teka Bartter, A.P.N., Kyle Kalkwarf, M.D., University of Arkansas for Medical Sciences (UAMS) and *University of Arkansas System* (UAS) are hereby dismissed; therefore all defendants have been dismissed out.

(Emphasis added.) Ford did not file an amended notice of appeal after the entry of this order.

Ford's failure to amend the notice of appeal has once again left us with an appeal from a nonfinal order. The May 5 order, which is the only order that has been appealed, failed to adjudicate or dismiss the claim against UA. Therefore, the proper course is for us to dismiss the case with prejudice because a timely filed notice of appeal from the May 25 final order cannot now be accomplished. *See Ballard v. Ally Fin., Inc.*, 2016 Ark. App. 539 (dismissing appeal with prejudice after appellant filed notice of appeal from a nonfinal order and failed to amend notice of appeal once a final order had been entered).

Dismissed with prejudice.

WHITEAKER and HIXSON, JJ., agree.

Frances Morris Finley and Willard Proctor, Jr., for appellant.

Friday, Eldredge & Clark, LLP, by: *Michelle Ator*, for appellees Matthew Steliga, M.D., and Kyle Kalkwarf, M.D.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Jane W. Duke* and *Graham Talley*, for appellees Natasa Milojkovic, M.D., and Angela Pennisi, M.D.