Court of Appeals, State of Michigan

ORDER

Dorothy Creech v W A Foote Memorial Hospital Inc

Docket No. 237437; 237438; 237439; 237440; 237441; 237442; 237443; 237444; 237445; 237446

LC No. 00-005650-NO; 00-005711-NO; 00-005740-NZ; 00-005752-NH; 01-000755-NO

Peter D. O'Connell
Presiding Judge

Kathleen Jansen

Christopher M. Murray
Judges

In light of its initial finding that the circuit court record needs to be developed further in order for this Court to adequately carry out the directives of the Supreme Court's September 21, 2005 order, on its own motion the Court orders the matter REMANDED to the Jackson Circuit Court for specific findings as to whether plaintiffs have presented valid tort claims in light of *Henry v Dow Chemical Co*, 473 Mich 63; 701 NW2d 684 (2005).

The motion to file the supplemental brief is denied as moot.

We do not retain jurisdiction.

Murray, J. (dissenting): I dissent from the decision to remand this case to the trial court for it to consider the ramifications of *Henry v The Dow Chemical Co*, 473 Mich 63; 701 NW2d 684 (2005). In my view, we should consider the *Henry* opinion, and when doing so, the conclusion would be essentially consistent with my prior partial dissent in this case. In *Henry* the Court rejected a tort claim that was premised upon the fear of future injury, including any emotional distress resulting from that fear. *Henry, supra* at 72-73, 79. In light of this clear and unequivocal holding, and in conjunction with my prior partial dissent in this case, I would again hold that plaintiffs' claims, to the extent they were based upon the fear of future injury, should be dismissed as uncognizable as a matter of law.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 28 2005
Date

Sandra Schultz Mengel
Chief Clerk