Court of Appeals, State of Michigan

ORDER

Estate of David Paul Florey v Mid Michigan Regional Medical Center-Midland; Estate of David Paul Florey v J Fintan Cooper MD; Estate of David Paul Florey v Mid Michigan Regional Medical Center-Midland

Docket Nos. 294229; 294233; 294234

LC Nos. 04-006973-NH; 06-001453-NH; 08-003046-NH

William C. Whitbeck
Presiding Judge

Peter D. O'Connell

Donald S. Owens
Judges

The Court orders that appellee's motion for leave to file a reply brief to appellant's answer to the motion to dismiss is GRANTED. The motion to dismiss is GRANTED IN PART and DENIED IN PART.

The motion to dismiss is GRANTED as to Docket No. 294229. Lower Court No. 04-006973-NH was not consolidated with the other two lower court case numbers at issue. Regardless of whether the April 22, 2008 stipulated order of dismissal without prejudice in Lower Court No. 04-006973-NH constitutes a final order, the September 17, 2009 claim of appeal was not timely filed as to that order. MCR 7.204(A)(1). Thus, this Court lacks jurisdiction over the claim of appeal as to Docket No. 294229.

The motion to dismiss is DENIED as to Docket Nos. 294233 and 294234 because appellee has not clearly established that this Court lacks jurisdiction over the claim of appeal as to the consolidated Lower Court Nos. 06-001453-NH and 08-003046-NH. Particularly, appellee has not clearly established that these lower court cases should be treated separately for appellate jurisdiction purposes where it appears that the claims in both cases could have been brought in a single complaint against both appellee and defendant Mid Michigan Regional Medical Center-Midland. See *Chen v Wayne State Univ*, 284 Mich App 172, 197; 771 NW2d 820 (2009) ("under [*People, ex rel Director of Conservation v Babcock*, 38 Mich App 336; 196 NW2d 489 (1972)], where two cases involve claims that could not have been brought as separate counts in a single complaint, but are nevertheless consolidated for administrative convenience, the consolidated cases retain their separate identities"). This order is without prejudice to appellee again raising this jurisdictional issue in his brief on appeal.

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

JAN 29 2010
Date

Sandra Schultz Mengel
Chief Clerk