

[Cite as *Brown v. Taji*, 2002-Ohio-4823.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Fleurette Brown,
Administratrix of
the Estate of
Alisha Nicole Brown,
Deceased

Court of Appeals No. L-02-1023

Trial Court No. CI-99-2697

Appellant

v.

Amal Taji, M.D., et al.

DECISION AND JUDGMENT ENTRY

Appellees

Decided: September 13, 2002

* * * * *

David R. Pheils, Jr., for appellant.

Gerald L. Kowalski and Dusty Rene Tinsely,
for appellees.

* * * * *

KNEPPER, J.

{¶1} This is an accelerated appeal from a judgment of the Lucas County Court of Common Pleas that granted the motion to dismiss filed by appellee Amal Taji, M.D. For the reasons set forth below, the judgment of the trial court is reversed.

{¶2} Appellant sets forth the following assignment of error:

{¶3} "The trial court prejudicially erred in granting defendant Taji's motion and dismissing plaintiff administratrix's wrongful death and survivorship claims of the estate against defendant Taji."

{¶4} The facts that are relevant to this appeal are as follows. On May 20, 1999, appellant Fleurette Brown, as administratrix of the estate of her daughter Alisha Nicole Brown, filed a complaint against Gary E. Crawford, M.D.; The Toledo Hospital and appellee Amal Taji, M.D. for medical malpractice, negligence and wrongful death. On July 17, 2000, the parties informed the trial court that they had reached a settlement in the total amount of \$75,000. The matter was continued pending approval of the settlement by the Lucas County Court of Common Pleas, Probate Division ("probate court"). On September 11, 2000, after hearing the matter, the probate court denied the application to approve the settlement. Upon motion of the defendants, the matter was set for rehearing on the denial. After hearing the matter, by judgment entry filed May 4, 2001, the probate court again refused to approve the settlement. On June 8, 2001, defendants Crawford and The Toledo Hospital filed in the probate court an "Application to Approve Partial Settlement and Distribution of Wrongful Death and Survival Claims." That same day, the probate court filed an entry approving settlement as to Dr. Crawford and The Toledo Hospital in the amount of \$75,000. On June 12, 2001, Dr. Taji filed in the trial court a motion to dismiss the case as to all three defendants, arguing that appellant had received the \$75,000 for which she had originally bargained. On July 31, 2001, appellant filed in the trial court a notice of dismissal of defendants Dr. Crawford and Toledo Hospital only. On October 13, 2001, the trial court granted Dr. Taji's motion and dismissed the

case, finding that settlement had been entered into "between Plaintiff and all defendants ***."

{¶5} This court has thoroughly reviewed the record of proceedings in this case. Initially, we note that the settlement originally proposed on July 17, 2000, to which all three defendants had agreed, subject to approval by the probate court, was never approved by the probate court. The settlement agreement proposed on June 8, 2001, which was approved by the probate court that same day, was as to defendants Crawford and The Toledo Hospital only; appellee was not a party to that agreement and approval. The finding of the trial court in its October 13, 2001 judgment entry that there was an agreement with probate approval entered into as to all three defendants clearly was in error. Accordingly, this court finds appellant's sole assignment of error well-taken.

{¶6} On consideration whereof, the October 13, 2001 decision of the Lucas County Court of Common Pleas dismissing this case is reversed. This matter is remanded to the trial court for further proceedings consistent with this decision. Costs of this appeal are assessed to appellee.

JUDGMENT REVERSED.

HANDWORK, SHERCK, and KNEPPER, JJ. concur.