

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001556-MR

BRUCE A. KLOCKARS; FLAGET HEALTHCARE,
INC. D/B/A FLAGET MEMORIAL HOSPITAL;
MARK ABRAM, M.D.; THE MEDICAL EXECUTIVE
COMMITTEE OF FLAGET MEMORIAL HOSPITAL;
and JAMES HEDRICK, M.D.

APPELLANTS

v. APPEAL FROM NELSON CIRCUIT COURT
HONORABLE LARRY D. RAIKES, JUDGE
ACTION NO. 02-CI-00074

BETTY LEW ANDERSON, M.D.

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE and BARBER, JUDGES and JOHN D.
MILLER, SENIOR JUDGE.¹

EMBERTON, CHIEF JUDGE. This case arises from a petition for a writ of prohibition to prevent Flaget Memorial Hospital from holding a hospital peer review hearing without giving the

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

appellee, Dr. Betty Lew Anderson, the right to subpoena witnesses and compel the production of evidence. After a temporary writ was issued, the trial court dismissed the petition holding that it lacked jurisdiction over the matter because the medical staff meeting had not been conducted and Dr. Anderson's administrative remedies within the hospital had not been exhausted. Dr. Anderson does not appeal the dismissal of her petition. The issue presented on appeal concerns written statements made by the trial court in its judgment.

Referring to the hospital's own by-laws, the trial court stated that Dr. Anderson had the right to have subpoenas issued and the right to the production of documents. However the court further held that:

In summary, while the Court finds that Flaget is about to act improperly, but within its jurisdiction, it cannot properly issue the requested Writ herein because Anderson will have an adequate remedy of appeal should the Respondents opt to go forward with the hearing without compliance with her requests for subpoena process.

It is apparent that the court's statements regarding the substantive issue of the hospital's subpoena power is non-binding dicta. Once the trial court ruled it lacked jurisdiction, it likewise had no jurisdiction to bind the parties to any substantive issue raised.²

² H. R., ex rel. Taylor v. Revlett, Ky. App., 998 S.W.2d 778 (1999).

The hospital's concern is that the trial court's statements regarding the hospital's subpoena power is the "law of the case," thus, necessitating this appeal. Dicta, having no binding value, does not establish the law of the case.

While the trial court's dicta may be indicative of its opinion on the matter presented, it is not bound to follow previously expressed dicta, nor does it preclude the litigant from subsequently appealing the issue when, and if, the trial court makes a ruling adverse to the litigant's interests. Since the trial court's statements regarding the hospital's subpoena power have no binding effect on the parties, the language need not be stricken from the judgment nor the judgment disturbed.

The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Charles J. Cronan IV
Margaret R. Appenfelder
STITES & HARBISON PLLC
Louisville, Kentucky

Sharon K. Hager
HALL, RENDER, KILLIAN, HEATH &
LYMAN, P.S.C
Louisville, Kentucky

BRIEF FOR APPELLEE:

John Douglas Hubbard
FULTON, HUBBARD & HUBBARD
Bardstown, Kentucky