

Kentucky Court Of Appeals
Cases of Note
July-August, 2017

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

NEGLIGENCE

House v. Jewish Hospital & St. Mary's Healthcare, Inc.

2015-CA-001205 07/28/2017 2017 WL 3495923

Opinion by Judge Acree; Chief Judge Kramer and Judge Johnson concurred. In a medical malpractice case involving an “empty-chair” defendant, the circuit court granted the participating defendant’s motion for a partial directed verdict of negligence against the “empty-chair” defendant (and thereby effectively against the plaintiff) at the close of plaintiff’s case and before the presentation, during the participating defendant’s case, of contradictory evidence. The Court of Appeals reversed the circuit court’s grant of a partial directed verdict, holding that the ruling was premature and that “[n]o directed verdict may be entered against an empty-chair defendant prior to the close of all evidence.” In reaching this conclusion, the Court noted that the circuit court failed to consider shifting burdens of presentation and proof in “empty-chair” cases such as this, as described in *CertainTeed Corp. v. Dexter*, 330 S.W.3d 64 (Ky. 2010). In the participating defendant’s cross-appeal, the Court of Appeals held: (1) that it had no jurisdiction to review the denial of a summary judgment motion made after a trial on the merits; (2) that it could not reverse the circuit court’s denial of a directed verdict where there was not a complete absence of proof on a material issue and where there were disputed issues of fact upon which reasonable minds could differ; and (3) that it was not error for the circuit court to allow the plaintiff’s expert to testify about the hospital’s duty to train its nursing staff regarding its own policies, and that such testimony did not constitute a fundamental change in the plaintiff’s theory of liability