

COA Conflict Opinion: Retroactive application of Supreme Court precedent to a closed case

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In *King v McPherson Hospital*, No. 284436, the Court of Appeals held that a party cannot obtain relief from a final judgment under Mich. Ct. R. 2.612(C)(1)(f) based upon a partially retroactive change or clarification in the law when a final judgment is entered in the case before the date of the change or clarification.

In the underlying medical malpractice case, the defendant had won at the trial and appellate levels, and the case had been closed completely. Subsequently, the Court decided *Mullins v St. Joseph Mercy Hospital*, 480 Mich 948; 741 NW2d 300 (2007), a case that clarified the timetables for medical malpractice litigation and was partially retroactively applicable. At the time of the *Mullins* decision, the instant case was closed and no motion was pending before the court. The plaintiff motioned for relief from judgment under Mich. Ct. R. 2.612(C)(1)(f), which requires that the substantial rights of the opposing party would not be detrimentally affected if the judgment was set aside, and that extraordinary circumstances existed that mandate setting aside the judgment in order to achieve justice. The plaintiff argued that *Mullins* constituted extraordinary circumstances under the Rule, and that the defendant's rights would not be detrimentally affected by setting aside the judgment. The trial court's denied the motion, the Court of Appeals reversed, and then the Court convened a Conflict Panel to consider the issue.

In the Conflict Panel opinion, the Court held that the trial court did not abuse its discretion when it denied the plaintiff's motion for relief from judgment. The Court reasoned that both the Michigan and United States Supreme Court have held that even a case given full retroactivity does not apply to a closed case. Thus a change in the law cannot be an "extraordinary circumstance" for the purpose of Mich. Ct. R. 2.612(C)(1)(f). Additionally, the court held that the defendant's rights would be substantially and detrimentally affected because they would be required to re-litigate a case that had already been through the appeals process and resulted in a final judgment. Furthermore, there was no suggestion that the defendants had behaved inappropriately in obtaining the final judgment. Finally, the Court noted that although the rule may seem arbitrary or unfair, retroactivity in civil cases must be limited by the need for finality. Therefore, the Conflict Panel concluded that relief was not available under Mich. Ct. R. 2.612(C)(1)(f).

The [dissent](#) would hold that *Mullins* was not a "change in the law" but instead was "a pardon for those plaintiffs who failed to timely discern the ramifications of the Supreme Court decision in *Waltz v Wyse*[], 469 Mich 642; 677 NW2d 813 (2004)]." The dissent would further hold that all plaintiffs who were dismissed as a result of the

confusion surrounding *Wyse* and the timetables for medical malpractice actions should be permitted to litigate their cases, regardless of whether their case was closed by the time *Mullins* was issued.