

[Cite as *Jennings v. Univ. Ear, Nose & Throat Specialists, Inc.*, 2002-Ohio-4805.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PAMELA JENNINGS,	:	APPEAL NO. C-010516
	:	TRIAL NO. A-9800946
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
UNIVERSITY EAR, NOSE & THROAT	:	
SPECIALISTS, INC.,	:	
	:	
and	:	
	:	
KEITH WILSON, M.D.,	:	
	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: September 13, 2002

Marlene Penny Manes and Alphonse A. Gerhardstein, for Plaintiff-Appellant,

Frost, Brown, and Todd, L.L.C., Walter E. Haggerty, and Scott R. Brown, for Defendants-Appellees.

We have sua sponte removed this cause from the accelerated calendar.

Per Curiam.

{¶1} In two assignments of error, plaintiff-appellant Pamela Jennings appeals from the trial court’s entry of summary judgment “on the issue of immunity only” on her medical negligence claim against defendants-appellees, Keith Wilson, M.D., and his professional corporation, University Ear, Nose & Throat Specialists, Inc. In light of this court’s recent decision in *Johns v. Horton*, 1st Dist. No. C-010672, 2002-Ohio-3802, we reverse the judgment of the trial court.

{¶2} In *Johns*, this court specifically overruled its earlier decision in this case¹ and held that the Hamilton County Court of Common Pleas lacks subject-matter jurisdiction to determine whether the defendant-physician, a state employee, is entitled to immunity under R.C. 9.86 and 2743.02(F), where the Court of Claims has already determined that issue. See *Johns v. Horton*, at ¶77.

{¶3} Here, in its February 21, 1997, “Entry As To Immunity,” attached to Dr. Wilson’s motion for summary judgment, the Court of Claims determined that Dr. Wilson was not entitled to immunity under R.C. 9.86 and 2743.02 and could be sued in his individual capacity in the court of common pleas. According to the entry, Dr. Wilson, represented by counsel, made some type of appearance before the Court of Claims, though apparently not as a party.

{¶4} Once the Court of Claims decided that Dr. Wilson was not entitled to immunity, “the common pleas court had subject-matter jurisdiction to determine only the

¹ *Jennings v. Univ. Ear, Nose & Throat Specialists, Inc.* (Dec. 30, 1999), 1st Dist. No. C-980994, appeal dismissed (2000), 88 Ohio St.3d 1497, 727 N.E.2d 921.

merits of the negligence claims against [him] individually.” *Johns v. Horton*, 1st Dist. No. C-010672, 2002-Ohio-3802, at ¶75. Thus, we sustain Jennings’s first assignment.

{¶5} Her second assignment of error, contesting the trial court’s decision to end discovery on the immunity issue, is rendered moot by our resolution of the first assignment of error. See App.R. 12(A)(1)(c).

{¶6} Therefore, the judgment of the trial court is reversed, and this case is remanded for further proceedings consistent with law and with this Decision.

Judgment reversed and case remanded.

DOAN, P.J., GORMAN and WINKLER, JJ.

Please Note:

The court has placed of record its own entry in this case on the date of the release of this Decision.