

INDIANA COURT OF APPEALS RESTRICTS DISMISSAL OF MEDICAL MALPRACTICE CLAIMS UNDER THE MEDICAL MALPRACTICE ACT

In *Mooney v. Anonymous*, the Indiana Court of Appeals re-evaluated a trial court's authority and jurisdiction to dismiss medical malpractice claims based upon a plaintiff's failure to comply with the Medical Malpractice Act and to diligently prosecute the claim. Although the Court of Appeals' decision was based upon procedural developments and global delays unique to that particular case, its holding brings into question the ability of other medical malpractice defendants to pursue dismissal as a remedy under applicable provisions of the Medical Malpractice Act as well as Indiana Trial Rule 41(E).

When the trial court dismissed Mooney's medical malpractice claim, it did so based upon his failure to diligently prosecute the case and to comply with the provisions of the Medical Malpractice Act, namely his failure to file his medical review panel submission within the statutory 180-day deadline. The Indiana Court of Appeals reversed the trial court's decision and concluded that the trial court had abused its discretion by dismissing the complaint under Ind. Code § 34-18-10-14 and that it lacked jurisdiction to dismiss the complaint under Indiana Trial Rule 41(E).

The Indiana Court of Appeals noted that there are three ways a trial court can grant relief before the medical review panel has issued its opinion. First, Ind. Code § 34-18-11-1(a) states that a trial court has the power to preliminarily determine an affirmative defense or issue of law or fact that may be preliminarily determined under the Indiana Rules of Procedure and may compel discovery in accordance with the Indiana Rules of Procedure. This grant of authority is limited to deciding issues of law or fact that may be preliminarily determined under Trial Rule 12(D) and compelling discovery pursuant to Trial Rules 26 through 37. Second, Ind. Code § 34-18-8-8 permits the Commission of the Indiana Department of Insurance on the Commissioner's own motion or on the motion of a party to file a motion in Marion County Circuit Court to dismiss the case under Trial Rule 41(E) if no action has been taken on the case for at least two years. Third, a trial court can grant relief under Ind. Code § 34-18-10-14 when two conditions have been met: (i) a party, attorney, or panelist has failed to act as required by Ind. Code Chapter 34-18-10; and (ii) good cause has not been shown for the failure to act.

When applying the foregoing standards to the procedural facts of the *Mooney* matter, the Indiana Court of Appeals concluded that Mooney did not fail to comply with a trial rule or fail to prosecute his claim in a timely manner. The Indiana Court of Appeals reached that conclusion despite the fact that the plaintiff had failed to respond to discovery in a timely manner and failed to tender his medical review panel submission within the initial 180-day deadline established by the panel chairman. The Indiana Court of Appeals instead focused on the defendants' own actions in contributing to the delay by failing to timely make themselves available for depositions and implicitly agreeing to a withdrawal of the submission schedule and a reasonable extension of the 180-day deadline when the plaintiff's counsel initially cautioned them against forming a medical review panel and triggering the 180-day deadline while substantial discovery remained to be completed. The Indiana Court of Appeals applied the foregoing result to all defendants even though only some had failed to respond to requests for depositions.

After concluding that the trial court had abused its discretion under the applicable provisions of the Medical Malpractice Act, the Court of Appeals then addressed the availability of a remedy to the defendants under Trial Rule 41(E). The Court of Appeals concluded that because a party, and not the Commissioner, moved to dismiss under Trial 41(E), the trial court was without jurisdiction to rule on the motion under Ind. Code § 34-18-8-8. Although the Court of Appeals did not specifically apply or comment upon the requirement that no action be taken for at least two years in order for dismissal to be pursued under Ind. Code § 34-18-8-8, it stands to reason that the two year standard would be strictly applied even though in the past defendants have routinely been granted dismissal for periods of activity exceeding the more lenient sixty day standard set forth in Trial Rule 41(E).

For the reasons stated above, defendants in medical malpractice cases should, unfortunately, be leery in agreeing to informal extensions of time or acquiescing to the schedules of their co-defendants for fear of negatively impacting their own right to seek dismissal as a sanction for plaintiff's undue delay in prosecuting his or her claim. In addition, periods of inactivity in excess of two years will be required to pursue dismissal and, even then, the remedy under Trial Rule 41(E) will only be available at the discretion of the Commissioner, who must file the

motion on the defendants' behalf. This will not only unnecessarily tie up the resources of the Commissioner but will also potentially foster a more rigid, less courteous environment among the attorneys prosecuting and defending cases under the Medical Malpractice Act.

For questions or additional information, please contact your regular Hall Render attorney.