

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

KAITLYN CALAWAY EX REL. KATHLEEN CALAWAY

v.

JODI SCHUCKER, M.D.

No. M2004-02856-SC-R23-CQ

ORDER

The appellants, Kaitlyn Calaway and Kathleen Calaway, filed a motion for rehearing of the opinion of this Court issued February 21, 2006. In their petition, the appellants request that the Court give prospective application of the newly announced rule to cases involving *injuries occurring* after December 9, 2005, rather than to *cases commenced* after this date.

Upon due consideration, we conclude that the appellants' petition is not well-taken and should be denied.

Also before the Court is a motion to rehear filed by the appellee, Dr. Jodi Schucker. Appellee argues violation of her Due Process rights on two grounds: (1) that she was not given the opportunity to respond to the plaintiff's motion to rehear on the matter of prospective application and (2) that prospective application of the new rule in a manner consistent with Due Process requires this Court to balance the appellant's reliance interest on the old rule against the appellee's vested property interest in the new rule.

After careful consideration, the Court is of the opinion that this motion filed by the appellee should be denied.

Justices Anderson and Holder adhere to the views previously expressed in their previously filed dissent.

IT IS SO ORDERED.

PER CURIAM