

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 10, 2001 Session

**ALVIN BATES v. DR. JOSEPH METCALF, IV, d/b/a OAK RIDGE
SURGEONS, P.C.**

**Appeal from the Circuit Court for Anderson County
No. 98LA0448 Hon. James B. Scott, Jr., Judge**

FILED DECEMBER 3, 2001

No. E2001-00358-COA-R3-CV

CONCURRING OPINION

I concur with the result reached by Judge Goddard in this case. Judge Susano has filed an able Dissent on the issue of medical battery. I do not agree with the Dissent, because I believe Dr. Metcalf properly testified about telling plaintiff that whatever he found under the examination, if it could be fixed, he would fix it. The record establishes that plaintiff knew an anal fissure was possible, and Dr. Metcalf testified that plaintiff expected him to fix it if it was found.

The parol evidence rule does not bar this testimony, because the written request for surgery form sets forth that unforeseen conditions could require additional surgery, and the form explicitly authorized such surgery to be performed. In order for the parol evidence rule to apply, the written agreement must be intended by the parties to be a final expression of their agreement and intended to be a complete and exclusive statement of the terms of the agreement. I cannot find that intent from the request for surgery form, and the abovementioned provision is subject to be explained and supplemented by oral evidence. *See Strickland v. City of Lawrenceburg*, 611 S.W.2d 832.

HERSCHEL PICKENS FRANKS, J.