

IN THE SUPREME COURT OF TEXAS

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No. 05-0752
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UNITED STATES OF AMERICA AND TRAILBLAZER HEALTH
ENTERPRISES, LLC, PETITIONERS,

v.

AFUAH BOATENG, JOHNELL SANDERS FERNANDEZ, SHARON LONG
GAY, JOEL S. HOCHMAN, ROSALIND HULL, GLORIA ANN TUCKER
AND MISSY L. WALKER, RESPONDENTS

=====
ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS
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PER CURIAM

In this case, the United States, on behalf of its Medicare intermediary TrailBlazer Health Enterprises, L.L.C., filed a bill of review asserting that the default garnishment judgment rendered against TrailBlazer should be set aside on sovereign immunity grounds¹. At a preliminary hearing, the trial court granted the bill of review, set aside the default judgment, and dismissed the garnishment action, concluding that because TrailBlazer was entitled to sovereign immunity, the garnishment court lacked subject matter jurisdiction.

A divided court of appeals reversed and remanded, concluding that procedural due process required the trial court to set the matter for trial and provide the garnishor an opportunity to be heard

¹ TrailBlazer is also a party to this appeal.

on the merits of the bill of review. 171 S.W.3d 481, 494. The dissent disagreed, observing that no process was due because the trial court correctly determined that sovereign immunity deprived the garnishment court of subject matter jurisdiction. *Id.* at 495-98 (Hudson, J., dissenting). In a footnote, the majority disagreed with the dissent's analysis, but declined to explain, concluding that the merits of the sovereign immunity issue were not presented on appeal. *Id.* at 495, n.8. Because fact issues remain regarding the extent of the United States' and TrailBlazer's sovereign immunity claims, we deny the petitions for review.

Opinion delivered: April 20, 2007