

STATE OF MICHIGAN
COURT OF APPEALS

DEBRA E. RODRIQUEZ, Personal Representative of
the ESTATE of AMATTO J. RODRIQUEZ,
Deceased,

UNPUBLISHED
February 27, 1998

Plaintiff- Appellant,

v

JAMES A. RUTHERFORD, M.D., JOHN G.
CRABILL, M.D., SOUTHWESTERN MEDICAL
CLINIC, P.C., LAKELAND REGIONAL HEALTH
SYSTEM, PAWATING HOSPITAL and
PAWATING HOSPITAL ASSOCIATION,

No. 201882
Berrien Circuit Court
LC No. 96-004044-NH

Defendants- Appellees.

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

In this appeal as of right, plaintiff challenges the propriety of the dismissal of her wrongful death action pursuant to MCR 2.116(C)(6). We reverse and remand for trial. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary dismissal pursuant to MCR 2.116(C)(6) is proper when “[a]nother action has been initiated between the same parties involving the same claim.” The court rule is a codification of the former plea of abatement by prior action. *Darin v Haven*, 175 Mich App 144, 147; 437 NW2d 349 (1989); *Sovran Bank, NA v Parsons*, 159 Mich App 408, 412; 407 NW2d 13 (1987). Its purpose is to protect parties from the harassment of new suits involving the same questions as those in pending litigation. *Sovran Bank, supra*. Accordingly, the rule of abatement does not apply unless the second suit is vexatious. *Schaub v Carolina Construction Co*, 365 Mich 514, 517-518; 113 NW2d 796 (1962). A second action is not vexatious and, hence, not subject to abatement, where the prior pending action is deficient in the manner in which it is brought such that the trial court never reaches the merits of the first suit. *Id*

* Circuit judge, sitting on the Court of Appeals by assignment.

The instant case is not vexatious on its face and, therefore, the trial court's summary dismissal of it does not further the purpose of MCR 2.116(C)(6) and abatement. *Schaub, supra* at 518. The record indicates that the trial court dismissed plaintiff's first suit without prejudice and without restriction on plaintiff's refiling of the suit upon the expiration of the 182-day notice period. *Neal v Oakwood Hosp*, ____ Mich App ____; ____ NW2d ____ (Docket No. 196964, issued 12/12/97). There is no indication in the record that plaintiff commenced the second suit in bad faith. Finally, to require plaintiff to file yet a third suit would result in a waste of the resources of both the court and the parties and a construction of MCR 2.116(C)(6) at odds with the dictates of MCR 1.105, which requires that the court rules be construed to secure the speedy and economical determination of an action. Accordingly, the trial court erroneously granted summary disposition in favor of defendants.

In view of our disposition of this issue, we need not address plaintiff's remaining issue on appeal.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Michael G. Harrison