

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS WAGNER and WAYNE WAGNER,

Plaintiffs-Appellants,

v

NABIL WEHBE, D.O., RUTH KOZLOWSKI, D.O.,
WOODLAND MEDICAL CENTER, SAAD
SABBAGH, M.D., and HURON VALLEY
HOSPITAL,

Defendants-Appellees.

UNPUBLISHED

March 27, 1998

No. 198133

Oakland Circuit Court

LC No. 96-515972 NH

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

In this medical malpractice action, plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants on the ground that the action was barred by the statute of limitations. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The August 1994 notice of intent delivered by plaintiff's first counsel to defendants satisfied the notice requirements of MCL 600.2912b(1), (2) and (4); MSA 27A.2912b(1), (2) and (4), for purposes of initiating any tolling period in favor of plaintiffs, regardless of whether it sufficed to operate against defendants. Moreover, the August 1994 notice of intent, and not the July 1995 notice of intent delivered to defendants by plaintiffs second counsel, constituted the "initial notice" within the meaning of MCL 600.2912b(6); MSA 27A.2912b(6), because it was delivered to defendants first in time. By operation of MCL 600.5856(d); MSA 27A.5856(d), the August 1994 notice of intent did not toll the running of the statute of limitations during the notice period because the 182-day notice period attending the August 1994 notice of intent expired before the running of the statute of limitations. The subsequent July 1995 notice of intent is precluded from tolling the statute of limitations. MCL 600.2912b(6); MSA 27A.2912b(6). Accordingly, plaintiffs' action is time-barred.

Plaintiffs failed to raise their equitable estoppel claim below and, therefore, we need not address it. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 421; 546 NW2d 648 (1996). Nevertheless,

on the record facts, we find plaintiffs' claim that defendants concealed a material fact from plaintiffs untenable. *Lothian v City of Detroit*, 414 Mich 160, 177-179; 324 NW2d 9 (1982). Moreover, the record lacks any evidence that defendants engaged in either intentional or negligent conduct designed to induce plaintiffs to refrain from bringing a timely action. *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263; 562 NW2d 648 (1997). Finally, the notice process of MCL 600.2912b is not designed to elicit such non-factual defenses.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs