

STATE OF MICHIGAN  
COURT OF APPEALS

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TERRI LEA HEIDISCH, Personal Representative of  
the Estate of ROBERT HEIDISCH, Deceased,

UNPUBLISHED  
May 5, 1998

Plaintiff-Appellant,

v

No. 199032  
Oakland Circuit Court  
LC No. 96-517089 NH

DR. CHRISTIAN McTURK, MERCY MEDICAL  
GROUP, MERCY HEALTH SERVICES, and ST.  
JOSEPH MERCY HOSPITAL,

Defendants-Appellees.

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Before: Bandstra, P.J., and MacKenzie and N.O. Holowka\*, JJ.

MEMORANDUM.

Plaintiff appeals by right dismissal of this medical malpractice action, without prejudice, as having been prematurely filed before expiration of the notice period mandated by MCL 600.2912b; MSA 27A.2912(2). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The cited statute precludes the filing of a medical malpractice action until after expiration of the notice period prescribed. As this action was filed before that time, that dismissal occurred after the time had run is irrelevant; premature actions are barred by the statute and must be dismissed, albeit without prejudice. *Neal v Okayed Hospital Corp*, 226 Mich App 701, 715; \_\_\_ NW2d \_\_\_ (1997). There is no requirement that the defendants demonstrate any prejudice in order to avail themselves of the statutory bar. If, as plaintiff asserts, retroactive application of related tort reform statutes will infringe her vested rights if the claim is refiled, such issues are properly raised and addressed in any such subsequent proceeding.

Plaintiff's claim that the statute infringes upon the Supreme Court's rulemaking authority, Const 1963, art 6, § 5, and therefore violates separation of powers principles, Const 1963, art 3, § 2, was rejected in *Neal, supra* at 722-723. Similarly, the assertion that the statute represents an impermissible delegation of legislative and judicial authority to private health care providers was rejected in *Neal*,

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

*supra* at 721. Challenges to the constitutionality of the statute under the equal protection and due process clauses of US Const, Am XIV, § 1 and Const 1963, art 1, §§ 2 and 17, were analyzed and found to be without merit in *Neal, supra* at 716-721. And, as in *Neal, supra* at 722, plaintiff argues that the statute is unconstitutionally vague but fails to provide any authority addressing this contention, and the issue must be deemed abandoned.

We affirm.

/s/ Richard A. Bandstra  
/s/ Barbara B. MacKenzie  
/s/ Nick O. Holowka