

STATE OF MICHIGAN
COURT OF APPEALS

JAMES KEYES and ROSALIE KEYES,

Plaintiffs-Appellants,

v

RUSSELL ROTHROCK, M.D., and BATTLE
CREEK NEUROSURGICAL SERVICES, P.C.,

Defendants-Appellees,

and

BATTLE CREEK HEALTH SYSTEM,

Defendant.

UNPUBLISHED
February 23, 2001

No. 218684
Calhoun Circuit Court
LC No. 98-004538-NM

Before: Murphy, P.J., and Griffin and Wilder, JJ.

MURPHY, P.J. (*concurring*).

I concur with the decision of my colleagues to affirm, but only because we are bound by the statutory language and previous decisions as set forth in the majority opinion. I write separately to note my sympathy for plaintiffs' arguments because I believe that the ultimate intent of this legislation, a reduction in frivolous medical malpractice claims, is simply not served in the case at bar. Given the circumstances herein presented, where a clearly meritorious claim is being foreclosed on this purely procedural technicality, I am distressed that neither the statutory scheme nor the court rules provide the possibility of a sanction less harsh than dismissal. I would encourage the Legislature and the Supreme Court to reconsider this matter so as to empower the trial judge with some discretion to act under appropriate circumstances in order to avoid injustice.

/s/ William B. Murphy